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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 75, No. 137
Monday, July 19, 2010

ELECTION ASSISTANCE COMMISSION

2 CFR Chapter 58

Nonprocurement Debarment and Suspension

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Final rule.

SUMMARY: The Election Assistance Commission (EAC) is publishing its final rule implementing the Office of Management and Budget regulations on nonprocurement debarment and suspension. These proposed regulations will apply to nonprocurement grants, cooperative agreements and other similar transactions. Under this system, a person who is debarred or suspended is excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. EAC is also establishing a new 2 CFR chapter 58 part 5800 that adopts OMB's final government-wide guidance on nonprocurement debarment and suspension and contains supplemental EAC nonprocurement debarment and suspension provisions.

DATES: *Effective Date:* This rule is effective on August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Guggenheim or Tamar Nedzar, Election Assistance Commission 1201 New York Avenue, Suite 300, Washington, DC 20005; Telephone: 202–566–3100.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

The following is an outline of the preamble.

I. Disposition of the Comments

EAC issued a notice of proposed rulemaking and requested public comment on these rules on May 5, 2010 (75 FR 24494). The comment period ended June 4, 2010. EAC received no comments on this rulemaking activity, and therefore makes no changes to the proposed rules. The regulations in this notice are the same in form and substance as those posted in the Notice of Proposed Rulemaking.

II. Legal Basis for Rulemaking

Executive Order 12549, (3 CFR, 1986 Comp., 189 51 FR 6370), authorized OMB to establish a governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and to establish procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 6 of the Executive Order authorized OMB to issue guidelines to Executive departments and agencies that govern which program and activities are covered by the Executive Order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines. Pursuant to the Executive Order, on February 21, 1986 OMB published initial guidelines for nonprocurement debarment and suspension that applies to grants, cooperative agreements and similar transactions. EAC is adopting the OMB regulations found in 2 CFR part 180. To adopt these regulations, 2 CFR 180.25 requires federal agencies to address certain agency specific elements. The following regulations fulfill this requirement.

III. Discussion of Rulemaking

The United States Election Assistance Commission (EAC) was created by Congress in the Help America Vote Act of 2002. The Commission's primary function is to serve as a national clearinghouse and resource for information on and procedures for federal elections. EAC conducts studies on election administration and makes those studies available to the public. EAC also has adopted Voluntary Voting System Guidelines; administers a voting system testing and certification program; allocates election-related federal funding to the States; and carries out administrative duties under the National Voter Registration Act of 1993, including developing and maintaining a mail voter registration application form for elections to federal office.

In general, the proposed regulation gives the authority over debarment and suspension to the Contracting Officer. In the event of a vacancy or conflict of interest by the contracting officer, the debarment and suspension official will be the Chief Financial Officer. Covered transactions include all agency nonprocurement transactions, first-tier contracts and subcontracted funded by the EAC in excess of $25,000 or 30 percent of the value of the first-tier transaction, whichever is lesser. EAC is also providing covered individuals a right to request a reconsideration of a debarment action. In this process, an individual having received a disposition of the debarment action may submit to the Contracting Officer any newly discovered material evidence; proof of a reversal of the conviction or civil judgment upon which the debarment was based; a bona fide change in ownership or management; elimination of other causes for which the debarment or suspension was imposed; or other reasons the debarring official finds appropriate. By default, elements not addressed in the agency specific regulations will be covered by the government-wide sections in the Common Rule.

IV. Rulemaking Analysis and Notices

A. Executive Order 12866

EAC is an independent agency and is not subject to Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995

This final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Congressional Review Act

The Congressional Review Act, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EAC will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days from the date of publication in the **Federal Register**.

List of Subjects in 2 CFR Part 5800

Administrative practice and procedure, debarment and suspension, assistance programs, reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, under the authority at 2 CFR part 180, the Election Assistance Commission amends title 2 of the Code of Federal Regulations, by establishing Chapter 58, consisting of part 5800 to read as follows:

Title 2—Grants and Agreements

Chapter 58—Election Assistance Commission

PART 5800—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108; Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549; (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3); CFR, 1989 Comp., p. 235).

§ 5800.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. Election Assistance Commission ("the Commission" or "EAC") policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Commission to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" and 31 U.S.C. 6101 note.

§ 5800.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a "covered transaction" (see subpart B of 2 CFR part 180 and the definition of "nonprocurement transaction" at 2 CFR 180.970);

(b) Respondent in a Commission suspension or debarment action;

(c) Commission debarment or suspension official; or

(d) Commission grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 5800.30 What policies and procedures must I follow?

The Commission policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.,* 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § ___.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Commission policies and procedures are those in the OMB guidance.

Subpart A—General

§ 5800.137 Who at the Commission may grant an exception to let an excluded person participate in a covered transaction?

The Commission's Contracting Officer has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 5800.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Pursuant to 2 CFR 180.220(c), the Commission extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts to include any subcontract to be funded by the Commission, the value of which is expected to equal to or exceed $25,000 or 30 percent of the value of first-tier transaction, whichever is lesser.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 5800.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

If a lower-tier transaction is covered pursuant to § 5800.220, you as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 5800.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

§ 5800.765 May I ask the suspending official to reconsider a decision to suspend me?

Yes. Within 30 days of receiving a final notice of suspension, you may make a written request for the suspending official to reconsider your suspension.

§ 5800.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. Within 30 days of receiving a final notice of debarment, you may make a written request for the debarring official to reconsider your debarment pursuant to § 5800.880. The disposition of your request for reconsideration; or the result of your appeal; shall be considered a final agency action.

§ 5800.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 5800.890 How may I appeal my debarment?

(a) If the Commission debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official under § 875 to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request a review by the EAC's debarment appeals body (DAP), which is composed of the Executive Director, Chief Financial Officer, and Chief Operating Officer. The DAP will review your appeal and make a determination on whether to sustain or reverse the decision of the debarring official. The DAP will then make a recommendation to the EAC Commissioners who will vote by circulation on whether to accept or reject the recommendation of the DAP. A request to review the debarring official's decision to debar you must be made within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, the DAP may recommend to the EAC Commissioners that the debarring official's decision be reversed, based on a majority vote of the DAP, only where the DAP finds that the decision is based on a clear error of material fact or law, or where DAP finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration.

(b) A request for review under this section must be in writing; prominently state on the envelope or other cover and at the top of the first page "Debarment Appeal;" state the specific findings you believe to be in error; and include the reasons or legal bases for your position. The appeal request should be delivered or addressed to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(c) After the circulation vote of the EAC Commissioners has been certified, either the Commission debarring official or the DAP must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

(e) Nothing in this part prohibits the EAC from delegating the appeal review process to another Federal agency through a memorandum of understanding or interagency agreement.

Subparts E through H—[Reserved]

Subpart I—Definitions

§ 5800.930 Debarring official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

§ 5800.970 Nonprocurement transaction

While the Commission treats all payments made to states under 42 U.S.C. 15301, 15302 and 15401 as grants, this part does not apply to grants made to states and political subdivisions therein.

§ 5800.1010 Suspending official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

Subpart J [Reserved]

Thomas Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 2010–17429 Filed 7–16–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AB18

[Docket #GIPSA–2010–FGIS–0002]

Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Interim Rule with request for comments.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is issuing an interim rule to potentially make permanent the current waiver for high quality grain exported in containers

from the mandatory inspection and weighing requirements of the United States Grain Standards Act (USGSA). This interim rule only extends for 2 years a 5-year waiver that is set to expire on July 31, 2010, and asks for interested parties to comment on making this waiver permanent. This action advances the objectives of the USGSA by providing relief to an evolving sector of the grain industry.

DATES: Effective July 20, 2010; comments received by September 17, 2010 will be considered prior to the issuance of a final rule.

ADDRESSES: You may submit your written or electronic comments on this interim rule to:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643–S, Washington, DC 20260–3642.
- E-mail comments to *comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173.

Comments should be identified as "High Quality Special Grain Waiver," and should make reference to the date and page number of this issue of the **Federal Register**. All comments will become a matter of public record and available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Director, Compliance Division, at his e-mail address: *Thomas.C.Oconnor@usda.gov* or by telephone at (202) 720–8262.

SUPPLEMENTARY INFORMATION:

Background

The USGSA authorizes USDA to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired. Current waivers from the official inspection and Class X weighing requirements for export grain appear in § 800.18 (7 CFR 800.18) of the regulations issued under the USGSA. These waivers are provided for grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade, exporters and individual elevator operators shipping less than 15,000 metric tons during the current and preceding calendar years, and when services are not available or in emergency situations.

This interim rule extends for 2 years, or until July 31, 2012, a current 5-year waiver for high quality specialty grains exported in containers that was established by a final rule on December 13, 2005 (70 FR 73556). This interim rule also invites interested parties to comment on making this waiver for high quality specialty grain exported in containers permanent.

Typically, shippers of high quality specialty grain exported in containers are small entities that up until recently handled less than 15,000 metric tons of grain annually and thereby were exempt from mandatory inspection and weighing requirements in accordance with § 800.18(b) of the USGSA regulations. As the high quality specialty market has expanded, the volume of this specialty product has begun to exceed the 15,000 metric ton waiver threshold, making such grain subject to mandatory inspection and weighing under the USGSA.

GIPSA implemented the 5-year high quality specialty grain waiver in 2005 to relieve the burden of having to obtain mandatory official inspection and weighing services for this emerging niche market. High quality specialty grain is defined as grain in which all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or grain designated as "organic" as defined in § 205.2 (7 CFR 205.2) of the regulations issued under the Organic Foods Production Act of 1990, as amended (OFPA) (7 U.S.C. 6501–6522).

GIPSA has found that transactions involving high quality specialty grains typically are made between dedicated buyers and sellers who have ongoing business relationships and fully understand each other's specific needs and capabilities. Typically, sales are for grain that meets strict commercial contract specifications for quality, production, handling, and packaging. GIPSA believes that mandating official inspection and weighing services for this specialty market would add an unnecessary cost. The cost of official inspection and weighing for these specialty operations is approximately $1.80 per metric ton compared to an average $0.34 per metric ton for traditional grain exports.

Since establishing the 5-year waiver, GIPSA has required that exporters of high quality specialty grain in containers maintain, submit upon request, and make available documentation that fully and correctly discloses their transactions. GIPSA has used this documentation to determine if the high quality specialty grain waiver continues to advance the objectives of the USGSA and to ensure that exporters of high quality specialty grain comply with the waiver provisions: (1) That all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or (2) Specify "organic" as defined by the regulations issued under the OFPA. Under this waiver (temporary or permanent), GIPSA still must collect information from exporters of high quality specialty grain in containers in order to ensure the integrity of the high quality specialty grain program.

During the 5-year waiver period, GIPSA reviewed documentation provided by exporters of high quality specialty grain and determined that it complied with the waiver provisions. This action provides regulatory relief to a small but continuously evolving sector of the grain industry that specializes in high quality grains. GIPSA believes that the high quality specialty grain waiver should eventually become permanent because it continues to advance the objectives of the USGSA. GIPSA, however, is issuing this interim final rule to extend the waiver until July 31, 20112, and is providing interested parties the opportunity to comment on whether this waiver should instead be made permanent.

Pursuant to 5 U.S.C 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule in effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** for the following reasons: (1) This interim rule will avoid market disruption that would result should the waiver expire and avoid uncertainty in the markets that would likewise result; (2) continued relief of the regulatory burden on affected entities is necessary to facilitate the continuing development of the high quality specialty export market and; therefore, this action should be implemented as soon as possible and (3) this rule provides a 60-day opportunity for comment; and all written comments timely received will be considered prior to finalization of the rule.

Alternatives Considered

GIPSA considered allowing this waiver to expire, but rejected that option since it would be financially burdensome to small businesses by requiring that they pay approximately $1.80 per metric ton for weighing and inspection services for high quality specialty grain, compared to an average $0.34 per metric ton for bulk grain exports. GIPSA also considered requiring relaxed inspection and weighing requirements for these grains,

but determined that even relaxed inspection and weighing requirements would still place an undue burden on these types of shipments.

Executive Order 12866 and Effect on Small Entities

This interim final rule has been determined not to be significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule would provide regulatory relief to both large and small businesses. The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[1] The SBA defines small grain exporters in its regulations (13 CFR 121.201) as entities having less than $7,000,000 in average annual receipts (NAICS code 115114). GIPSA believes this waiver effectively eliminates a cost impact on all high quality specialty grain exporters that would otherwise have to pay for GIPSA's onsite inspection and weighing services, without impairing the objectives of the USGSA. GIPSA estimates that there are currently 32 small and 8 large businesses (as defined by the SBA) operating as exporters of high quality specialty grain.

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), GIPSA has considered the economic impact of this interim rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities. GIPSA invites interested parties to comment on the impacts of this action on small businesses and on whether this waiver should be made permanent.

The growing market for high quality specialty grain exported in containers has caused shippers of high quality specialty grains to exceed the 15,000 metric ton waiver threshold for export inspection and weighing. GIPSA has consulted with its Grain Inspection Advisory Committee (Advisory Committee) on this issue. GIPSA's Advisory Committee is composed of members representing grain producers, handlers, processors, and exporters. The Advisory Committee has advocated that GIPSA make permanent the waiver for high quality specialty grains exported in containers. While GIPSA agrees with the Advisory Committee that permanently waiving high quality specialty grains exported in containers is consistent with the intent of the USGSA and will allow this market to continue to grow, GIPSA is issuing this interim final rule to (1) extend by 2 years the waiver, and (2) request that interested parties comment on whether this waiver should instead be made permanent.

This interim rule will continue to allow exporters of high quality specialty grains shipped in containers to ship high quality specialty grain without the cost burden of mandatory inspection and weighing, while allowing them to request the service when desired. Relieving this cost burden will continue to allow the industry to grow and equitably compete with global competitors.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g (7 U.S.C. 87g) that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this interim rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim rule.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection and recordkeeping included in this interim rule were approved by Office of Management and Budget under Control No. 0580–0022, and expire on May 31, 2012. This information collection continues to be necessary in order for GIPSA to ensure that exporters of high quality specialty grain shipped in containers comply with the waiver provisions contained in § 800.18 (7 CFR 800.18) of the regulations issued under the USGSA.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

■ For reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

PART 800—GENERAL PROVISIONS

■ 1. The authority citation for Part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. In § 800.0, paragraph (b)(44) is revised to read as follows:

§ 800.0 Meaning of terms.

* * * * *

■ (b) * * *

(44) *High Quality Specialty Grain.* Grain sold under contract terms that specify all factors exceed the grade limits for U.S. No. 1 grain, except for the factor test weight, or specify "organic" as defined by 7 CFR Part 205. This waiver expires on July 31, 2012.

* * * * *

■ 3. In § 800.18, paragraph (b)(8) is revised to read as follows:

§ 800.18 Waivers of the official inspection and Class X weighing requirements.

* * * * *

(b) * * *

(8) *High Quality Specialty Grain Shipped in Containers.* Official inspection and weighing requirements do not apply to high quality specialty grain exported in containers. Records generated during the normal course of business that pertain to these shipments must be made available to the Service upon request, for review or copying. These records must be maintained for a period of 3 years. This waiver expires on July 31, 2012.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–17529 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

RIN 0570–AA71

Rural Microentrepreneur Assistance Program; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Correcting amendments.

SUMMARY: The Agency published an Interim Rule in the **Federal Register** of May 28, 2010, [75 FR 30114] establishing a technical and financial assistance program for qualified microenterprise development organizations to support microentrepreneurs in the development

and ongoing success of rural microenterprises. This document has an incorrect definition of "nonprofit entity," contains an incomplete definition of "rural or rural area," and has an incorrect cross-reference.

DATES: Effective July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Lori Washington, (202) 720–9815.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the interim rule contains two incorrect definitions and an incorrect cross-reference.

The definition of "nonprofit entity" refers to a "private entity chartered as a nonprofit entity under State law." By including reference to "private entity," this definition restricts nonprofits from being eligible applicants if they are not private nonprofits. It was not the intention of the Agency to restrict eligible nonprofits to only private entities. Therefore, the Agency is deleting the word "private" for the definition on nonprofit entity.

The 2008 Farm Bill, which authorizes the Rural Microentrepreneur Assistance Program (RMAP), made several revisions to the rural area definition for programs administered under the Consolidated Farm and Rural Development Act. The definition of "rural or rural area" inadvertently excludes mandatory language from the 2008 Farm Bill "rural area" definition. Therefore, the Agency is revising this definition to be consistent with the 2008 Farm Bill.

In § 4280.315(d)(5) of the interim rule, there is an incorrect cross-reference to § 4280.316(e). The correct cross-reference is § 4280.316(d).

List of Subjects in 7 CFR Part 4280

Business programs, Grant programs, Loan programs, Microenterprise development organization, Microentrepreneur, Rural areas, Rural development, Small business.

■ Accordingly, 7 CFR part 4280 is corrected by making the following correcting amendments:

PART 4280—LOANS AND GRANTS

■ 1. The authority citation for part 4280 continues to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2009s.

Subpart D—Rural Microentrepreneur Assistance Program

■ 2. Section 4280.302(a) is corrected in the definition for "Nonprofit entity" by removing the words "A private" and adding in their place the word "An", and the definition for "Rural or rural area" is revised to read as follows:

§ 4280.302 Definitions and abbreviations.

(a) * * *

* * * * *

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(i) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character." Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is "not urban in character" for review, analysis, and decision by the Rural Development Under Secretary.

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

(v) On the petition of a unit of local government in an area described in paragraph (v)(A) or (B) of this definition, or on the initiative of the Under Secretary for Rural Development, the Under Secretary may determine that part of an area described in paragraph (v)(A) or (B) of this definition, is a rural area for the purposes of this paragraph, if the Under Secretary finds that the part is "rural in character", as determined by the Under Secretary.

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

* * * * *

§ 4280.315 [Corrected]

■ 3. In § 4280.315(d)(5), remove the reference "§ 4280.316(e)" and add, in its place, "§ 4280.316(d)."

Dated: July 13, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–17480 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–XY–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AB03]

Appliance Labeling Rule

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Final rule; opportunity for comment.

SUMMARY: Section 321 of the Energy Independence and Security Act of 2007 requires the Commission to consider the effectiveness of current labeling requirements for lamps (commonly referred to as light bulbs) and alternative labeling approaches. After holding a public meeting, conducting consumer research, issuing proposed changes to existing labeling requirements, and reviewing public comments, the Commission announces final amendments to the lamp labeling requirements in the Appliance Labeling Rule. The Commission also seeks further comment on several issues for consideration in any subsequent rulemaking.

DATES: The amendments published in this document will become effective **July 19, 2011** except for the amendments to § 305.8 which will become effective **August 18, 2010**. Comments must be received on or before September 20, 2010.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at (*http://www.ftc.gov.*)

Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/lamplabels*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Lemuel Dowdy, (202) 326-2981, or Matthew Wilshire, (202) 326-2976, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Energy Independence and Security Act of 2007 (Pub. L. 110-140) ("EISA") directs the Commission to consider the effectiveness of its current labeling requirements for "lamps," commonly referred to as light bulbs, and alternative labeling approaches.[1] Pursuant to this mandate, on November 10, 2009, the Commission sought comment on proposed revisions to existing labeling requirements.[2] Having reviewed the comments submitted, the Commission now publishes final amendments to the Appliance Labeling Rule ("Rule") (16 CFR Part 305).[3] The amendments require manufacturers to provide brightness and energy-cost information on the front of light bulb packages and a detailed "Lighting Facts" label on the side or rear. In addition to these package labeling disclosures, the amendments also require certain disclosures on the product. These new labeling requirements should help consumers choose energy efficient bulbs that meet their lighting needs.

In effectuating these changes, this document provides background on the EISA provisions and the Notice of Proposed Rulemaking ("NPRM"), discusses the public comments received in response to the NPRM, reaffirms the Commission's intention to work with other agencies to promote consumer education, explains the effective date for the amendments, describes section-by-section the amendments to the Rule, requests comment on certain issues, and analyzes the impact of the amendments pursuant to the Paperwork Reduction and Regulatory Flexibility Acts.

II. Background

EISA directs the Department of Energy ("DOE") to issue stringent energy efficiency standards for lighting products. These standards, which begin in 2012, will eliminate low efficiency incandescent light bulbs from the market.[4] The remaining higher efficiency light bulbs will include products widely available now, such as compact fluorescent lamps ("CFLs"), as well as products likely to become increasingly available in the future, such as high efficiency solid-state lighting (*e.g.*, light-emitting diode ("LED") products).

In conjunction with these new efficiency standards, EISA directs the FTC to consider the effectiveness of its current light bulb labeling requirements and possible alternatives to help consumers understand and choose new high efficiency bulbs that meet their needs. In particular, EISA directs the Commission to consider labeling disclosures addressing light level, light quality, lamp life, and total lifecycle cost.

In response, on July 18, 2008, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") (73 FR 40988) seeking comment on potential label changes.[5] The Commission then held a public roundtable on September 15, 2008.[6] Commenters and roundtable participants discussed the effectiveness of current labeling requirements, as well as whether labeling alternatives would help consumers in their purchasing decisions. Finally, the Commission conducted consumer research to assess potential revisions to its labeling requirements.[7]

III. Notice of Proposed Rulemaking

After reviewing the ANPR and Roundtable comments, as well as the consumer research, the Commission published a Notice of Proposed Rulemaking ("NPRM") on November 10, 2009. The NPRM proposed a two-panel labeling format for light bulb packages: a front panel displaying brightness and energy-cost information, and a rear or side panel displaying a "Lighting Facts" label with additional information.[8] The proposed mandatory disclosures included brightness, energy cost, bulb life, color appearance, wattage, mercury content, and voltage for nonstandard voltage bulbs. The proposal also gave

[1] This document uses the terms lamp, lightbulb, and bulb interchangeably.

[2] 74 FR 57950 (Nov. 10, 2009).

[3] The Rule's full title is "Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances And Other Products Required Under The Energy Policy And Conservation Act" ("Appliance Labeling Rule").

[4] 42 U.S.C. 6295(i).

[5] The comments received in response to the ANPR are at (*http://www.ftc.gov/os/comments/lightbulbs/index.shtm*).

[6] A transcript of the roundtable can be found at (*http://www.ftc.gov/bcp/workshops/lamp/transcript.pdf*).

[7] *See* 73 FR 72800 (Dec. 1, 2008); 74 FR 7894 (Feb. 20, 2009). Study results are available at (*http://www.ftc.gov/os/comments/lightbulbs/index.shtm*).

[8] *See* 74 FR at 57953, Figure 2.

manufacturers the discretion to place the ENERGY STAR logo on the Lighting Facts label for products covered by that program.[9] However, the Commission did not propose disclosures addressing a bulb's lifecycle or color rendering index.

In addition to changing the disclosures on package labels, the proposed amendments required a brightness disclosure on all the products themselves and a mercury disclosure on products containing mercury. Finally, the proposed amendments prescribed disclosures for the assumptions manufacturers use to calculate voluntary operating cost and life claims for bulbs, if they differ from the assumptions used to calculate those disclosures on the label.

IV. Effectiveness of Current Labeling Requirements

In its NPRM, the Commission explained that the current labeling requirements, which mandate disclosures for light output in lumens, energy use in watts, and life in hours, are not effective for high efficiency bulbs. The primary problem with the current label is that many consumers use wattage to measure brightness, even though wattage actually measures energy use.[10]

Consumers' use of watts, and not lumens, to gauge light output worked in a market dominated by incandescent bulbs because the wattage of these bulbs provides a consistent proxy for brightness. For example, a "100 watt" incandescent bulb typically provides enough light for reading, while a "40 watt" incandescent bulb typically provides sufficient brightness to light a hallway. However, as discussed in the NPRM, wattage does not provide a consistent measure of light output for high efficiency bulbs because a particular wattage can provide substantially different light output across technologies. For example, a traditional, standard incandescent bulb typically uses 100 watts to provide 1,600 lumens of light output. A CFL, on the other hand, can provide 1,600 lumens using only 25 watts, and an LED lamp can produce the same light output using even fewer watts.

No comments disputed the Commission's conclusion that the current label needs to be changed to better inform consumers about high efficiency bulbs, including addressing consumer reliance on watts as a proxy for brightness. However, as discussed below, commenters offered various opinions about the proposed changes.

V. Public Comments and Final Amendments

The Commission received 24 comments in response to the NPRM.[11] As discussed in more detail below, the comments addressed the proposed product coverage, the proposed package label format and content, "off label" claims on the package, labeling on the product, reporting and testing requirements, consumer education, and the compliance burden.[12]

A. Product Coverage

In its NPRM, the Commission proposed applying the new labeling requirements to three types of common household (medium screw base) light bulbs: general service incandescents,[13] CFLs, and general service LEDs.[14] The Commission also sought comment on whether it should include other types of consumer lamps under the new labeling requirements.

Comments: The Commission received two significant comments about product coverage. First, the Energy Efficiency Advocates[15] urged the Commission to expand the labeling requirements to include any screw-base lamp regardless of base size, bulb size, bulb shape, or technology. In particular, they argued that consumers who buy intermediate and candelabra screw bulbs should receive the same information about light output and operating cost as proposed for medium screw-base bulbs.[16] Second, GE and NEMA urged the Commission to exempt lamps that will no longer be sold after updated energy standards are issued. Specifically, beginning in 2012, new energy standards will phase out the sale of inefficient incandescent bulbs that do not meet specific efficiency standards. Because the timing of these standards is staggered, some incandescent bulbs will come off the market in 2012, others in 2013, and additional types 2014.[17] In GE and NEMA's view, requiring label changes for bulbs scheduled to be discontinued over the next few years would waste manufacturing resources.

Discussion: The final amendments cover the same bulb types described in the NPRM. However, the Energy Efficiency Advocates' suggestion that the Commission require labeling for all screw-based bulbs deserves further consideration. Many non-medium screw-based bulbs, such as intermediate and candelabra-based bulbs, are available to consumers for household use. The Commission, however, cannot cover these products without additional information about the costs and benefits

[9] ENERGY STAR is a voluntary government program administered by the Environmental Protection Agency that identifies high-efficiency products. *See* (*www.energystar.gov*). *See also* ENERGY STAR logo on Sample Label 11 in Appendix L of the Final Rule.

[10] *See* 74 FR at 57952.

[11] Unless otherwise stated, comments discussed in this document refer to the following: Buchanan, Robert #545052-00004; Burns-DeMelo, Heather #545052-00005; Consortium for Energy Efficiency ("CEE") #545052-00027; DOE #545052-00029; Earthjustice #545052-00024; East China Hi-tech Industrialization Park ("ECHIP") #545052-00018; Edison Electric Institute #545052-00023; Environmental Council of the States #545052-00021 (also known as the Quicksilver Caucus or "QSC"); Estes, Steve #545052-00007; Gainesville Regional Utilities #545052-00016; Gannon #545052-00003; GE Consumer and Industrial—Lighting ("GE") #545052-00013; Green Seal #545052-00019; Lutron Electronics Co., Inc. #545052-00010; a committee of the state environmental agencies of Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and Washington (collectively referred to as IMERC) #545052-00012; Malpass #545052-00009; Minnesota Pollution Control Agency ("MPCA") #545052-00028; Energy Efficiency Advocates (submitted by Natural Resources Defense Council) #545052-00017; National Electrical Manufacturers Association ("NEMA") #545052-00026; OSRAM SYLVANIA #545052-00022; Rubinfield, Adam #545052-00008; Ryan, Sean #545052-00011; Environmental Protection Agency ("EPA") #545052-00014; Vranich, John #545052-00015. All these comments are available at (*http://www.ftc.gov/os/comments/lamplabeling/index.shtm*).

[12] The comments did not address the issue of lifecycle cost. As explained in section V.B.2.h, the Commission is not requiring a lifecycle cost disclosure. *See also* 74 FR at 57959.

[13] The final amendments require labeling for two types of incandescent bulbs that the EISA definitions do not cover: reflector lamps and 3-way incandescent lamps. As explained in the NPRM, prior to EISA, the Commission's labeling rules covered these bulbs because they were defined as "general service incandescent lamps." 74 FR at 57953 n. 27. EISA excluded them from that definition and thus appears to have inadvertently removed these products from the law's labeling requirements. *See* 42 U.S.C. 6291(30)(D). However, using our general authority under 42 U.S.C. 6294(a)(6), the Commission is continuing to require labeling for these products because for more than a decade the FTC has required consumer labels on these common products for which continued labeling would assist consumers. No comments suggested excluding them from the amended Rule.

[14] 74 FR at 57952-3. Although the EISA amendments do not expressly require LED labeling, *see* 42 U.S.C. 6294, the Commission proposed to cover them using its general authority to label consumer products under 42 U.S.C. 6294(a)(6). *See* 74 FR at 57953 n. 26.

[15] The Energy Efficiency Advocate comments, which were filed by the Natural Resources Defense Council ("NRDC"), also represented the views of the Alliance to Save Energy, American Council for an Energy-Efficient Economy ("ACEEE"), NRDC, Northeast Energy Efficiency Partnerships, and the Northwest Energy Efficiency Alliance.

[16] In addition, Edison Electric Institute urged the Commission to require labeling of fossil fuel lamps such as natural gas lights, propane lights, and kerosene lights because of their high energy costs. For example, Edison Electric Institute estimated that a gas lamp using 2500 Btu/hr could cost approximately $262.80 per year to operate.

[17] *See* GE and NEMA comments. *See also* (*http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/lighting_legislation_fact_sheet_03_13_08.pdf*) (DOE schedule for efficiency standards).

to businesses and consumers. Specifically, in order to require labeling for these products, the FTC would need information identifying the particular bulbs proposed for coverage, as well as information concerning: 1) whether these bulbs use significant amounts of energy; 2) whether competing bulb models vary in light output, energy use, life, and color temperature; 3) whether consumers are likely to use in-store package labels to compare products; and 4) whether package size or other factors create undue burdens for manufacturers.

Therefore, the Commission seeks comment on these issues.[18] Under the Energy Policy and Conservation Act ("EPCA"), the Commission must consider reopening this rulemaking at least 180 days before the effective dates of the new DOE energy standards for incandescent lamps if the Commission determines that further labeling changes would help consumers.[19] Based on this authority, the Commission seeks comment on these and other issues discussed below.

In response to GE and NEMA's comments, the Commission exempts two categories of incandescent bulbs that will not meet 2012 energy efficiency standards.[20] The 2012 standards are scheduled to take effect just six months after the effective date for the new FTC labeling requirements.[21] Imposing new requirements on bulbs that will be in production for only six months would entail significant short-term costs for manufacturers with limited benefit to consumers. Therefore, manufacturers must continue to use the current labeling requirements for these bulbs until production ceases in 2012.

The Commission is not exempting bulbs subject to the 2013 and 2014 efficiency standards. Because these bulbs will remain in production for more than a year after the effective date of the final amendments, and because Congress has identified them as inefficient, applying the new labeling requirements to the bulbs will provide benefits to consumers that outweigh any additional cost to industry.

B. Package Labeling

In its NPRM, the Commission also solicited comment on proposed changes to the package-label format and disclosures.[22] Having considered the comments, the Commission: explains why the final amendments retain the proposed two-panel labeling scheme with some minor adjustments; prescribes the required package disclosures; discusses certain disclosures not included on the label; and, finally, sets out particular disclosure requirements for "off-label" energy and bulb life claims.

1. Two-Panel Format

In its NPRM, the Commission proposed a two-panel labeling format: a front panel with brightness (light output) and energy-cost information, and a side or rear panel with a Lighting Facts label containing additional information.[23] The Commission explained that this two-panel approach provides the most important information on the front and more detailed information on the side or rear, each in a simple-to-read format. The Commission sought comment on this two-panel approach, including whether smaller packages require alternative formats.

Comments: GE and NEMA asserted that the Commission should not require disclosures on the front panel, leaving that panel free for marketing messages. Conversely, CEE agreed with the proposed amendments, arguing that the proposed front-panel disclosures highlight "important product attributes for consumers to quickly understand."

GE and NEMA also raised concerns about the amount of package space required for the proposed disclosures. Specifically, they urged the Commission to allow manufacturers to modify the label format to fit small packages, as long as the information is clear and legible. In addition, NEMA noted that limited space could make it difficult to provide multilingual labels and provided examples of proposed bilingual labels in French and Spanish.

Finally, two commenters discussed multi-bulb packaging. GE commented that the final amendments should provide guidance for labeling packages containing more than one type of bulb. Earthjustice objected to an existing provision allowing manufacturers to place labels on bulk shipping cartons when the entire carton is sold at retail (§ 305.15(c)(4)). It asserted that retailers could take individual (unlabeled) packages out of the bulk container and display them separately without the required information.

Discussion: The final amendments retain the two-panel format.[24] As explained in the NPRM, consumer research identified brightness and energy information as particularly important to consumers.[25] The disclosure of these two key pieces of information on the front panel will allow consumers to make quick "on the shelf" comparisons. If only the Lighting Facts label were available, consumers would have to remove packages from the shelves to access this important information.

Moreover, the Commission's two-panel approach does not differ significantly from the FDA's well-established food labeling requirements, which, along with the Nutrition Facts label on the back or side package panel, require that the net weight and product name be provided on the primary package panel.[26]

In response to manufacturer concerns about bilingual labeling, the final amendments allow, but do not require, bilingual labeling. The Lighting Facts label may appear in a second language either on a separate label or on the same label following the English disclosures.[27] This approach will allow manufacturers to meet the need for bilingual packaging when necessary without creating an undue burden.

In contrast, FDA requires a bilingual label when a manufacturer makes a claim in a non-English language on a

[18] The Commission also seeks comment on whether the label should require beam spread information for reflector lamps as suggested by the Energy Efficiency Advocates, and, if so, how beam spread should be measured and described. In addition, the Commission seeks comment on fossil fuel lamps, including whether they meet the definition of consumer product in the statute, 42 U.S.C. 6291, and whether they are commonly used by consumers. Finally, the definition of "incandescent lamp" in the final rule has been corrected to track the current statutory language in EPCA (42 U.S.C. 6291).

[19] 42 U.S.C. 6294(a)(2)(D)(iii)(II)(bb).

[20] The two categories are: greater than 72 watt incandescent bulbs with lumen ranges between 1490 and 2600 and greater than 72 watt modified spectrum incandescents with lumen ranges of 1118 to 1950. *See* 42 U.S.C. 6295(i).

[21] The effective date is discussed in section V.H.

[22] 74 FR at 57953-60.

[23] 74 FR at 57953-4. "Lighting Facts" is a trademark held by the U.S. Government through the DOE solid-state lighting program. The FTC and DOE will work together to coordinate DOE's voluntary Lighting Facts program for LED products with the FTC's mandatory labeling for general service lamps. DOE explained in its comments that, to ensure a clear separation between the two agencies' activities, DOE's consumer-packaging efforts would address pin-based LED replacement lamps and LED luminaires, and not the medium screw-base LED bulbs covered by the FTC Rule.

[24] Section 305.15(b)(1)-(3).

[25] 74 FR at 57954. Participants in the FTC focus group identified "brightness" as the most important bulb attribute. Moreover, in the FTC label study, respondents gave high scores to the importance of brightness as well as energy information. Similarly, other research conducted by Natural Resources Canada ("NRCan") indicated that the "two top pieces of information people look for on light bulb packaging are brightness and energy usage or efficiency." *Id.*

[26] 21 CFR 101.3(d) and 101.105(a). FDA currently is exploring rule changes that would require additional front-of-package nutrition disclosures. 74 FR 62786 (Dec. 1, 2009).

[27] Section 305.15(b)(6). Appendix L contains an example of a bilingual Lighting Facts label.

package.[28] In light of the substantial marketing directed at non-English speakers, the Commission seeks comment on whether it should impose a similar requirement for bulb labeling when manufacturers make non-English package claims.

To address commenter concerns about fitting the Lighting Facts label on small packages, the final amendments contain three changes. First, as discussed in sections V.B.2.b.i and V.B.2.f, the Commission shortened the explanatory text for both the cost assumptions and mercury disclosures. Second, the final amendments allow manufacturers to choose from three standard formats: a basic, rectangular format; a wide format; and a tall format.[29] These three formats should allow manufacturers to fit the Lighting Facts label on most packages. Third, for particularly small packages, manufacturers may use a smaller, linear, text-only Lighting Facts label, if: 1) the total surface area available for labeling is less than 24 square inches;[30] and 2) the package shape or size cannot accommodate any of the three standard formats (in English) on the rear or side panel.[31]

Finally, the Commission is not altering the bulb shipping carton provision. In promulgating this provision more than a decade ago,[32] the Commission explained that the bulk-carton option applies only when lamps "are not packaged or labeled for individual retail sale" and when they are displayed in a "bulk shipping/retail display carton."[33] Because the individual bulbs subject to this provision are not labeled for individual retail sale, the problems foreseen by Earthjustice are not likely to arise. Indeed, the Commission has not received any evidence that this provision has caused problems.[34]

2. Package Disclosures

The final amendments retain the seven package-labeling disclosures proposed in the NPRM: brightness, energy cost, bulb life, color temperature (appearance), wattage, and, in some cases, voltage and mercury information.[35] The amendments do not include disclosures for color rendering index, total lifecycle cost, or several other disclosures suggested by the comments. Each of these disclosures is discussed below.

a. Brightness/Light Output

The NPRM proposed two changes to existing labeling requirements related to light output.[36] First, it proposed removing wattage information from the front of the package while continuing to require a prominent lumen disclosure. The Commission explained that this change aims to focus consumers on lumens, instead of watts, to determine light output. The Commission proposed placing a less prominent wattage disclosure on the Lighting Facts label. Second, the proposed amendments changed the term describing lumens from "light output" to "brightness." Both the FTC focus group and NRCan research suggested that consumers prefer the term "brightness" to "light output," and participants at the FTC's Roundtable routinely used the term "brightness" when describing light output.[37]

The NPRM did not propose requiring disclosure of watt equivalence, although manufacturers routinely communicate light output on CFL packages by providing conspicuous comparisons to incandescent lamps (*e.g.*, "this bulb is a '100 watt' equivalent" or "13W=60W").[38] The proposed amendments did not require such information because watt equivalence is likely to become much less important as the new DOE energy standards render most incandescent bulbs obsolete. Moreover, mandating a watt-equivalence disclosure could perpetuate consumer reliance on outdated information, thus hindering consumers' transition to lumens to determine brightness.

Comments: The comments raised four primary issues regarding brightness/light output: 1) the use of the term "brightness" versus "light output;" 2) rounding the lumen rating on package fronts; 3) whether to permit a voluntary watt-equivalence disclosure; and 4) standards for voluntary watt-equivalence claims.[39]

First, CEE disagreed with the Commission's proposal to require the term "brightness," arguing that "light output" is the technically correct term. CEE explained that the term "brightness" encompasses factors other than lumens, such as color temperature, and therefore could confuse consumers, particularly those who work with lighting designers or read product literature. No other commenters challenged the use of the term "brightness" to describe lumens on the label, and GE indicated that brightness was an acceptable term to describe the lumen rating.

Second, both NEMA and GE urged the Commission to allow manufacturers to round lumen ratings on the front of the package to help consumers compare the brightness of bulbs. They stated that consumers now purchase bulbs with an eye toward a limited number of wattage categories, generally defined by 40, 60, 75, and 100-watt incandescents, and it will be difficult for consumers to transition from choosing bulbs in these discrete categories to choosing bulbs measured to a single lumen. Accordingly, NEMA and GE urged the Commission to allow rounding of lumen ratings to create similar "classes" for high efficiency light bulbs. For example,

[28] 21 CFR 101.15(c)(2). In addition, in a variety of contexts, the Commission requires disclosures to be made in the language in which products or services are marketed. *See* 16 CFR 14.9 (foreign language disclosures in advertising); 16 CFR 308.3(a)(1) (foreign language disclosures under Pay Per Call Rule); 16 CFR 429.1(a) (foreign language disclosure of right to cancel door-to-door sales); 16 CFR 455.5 (Spanish language version of FTC's used car disclosures); and 16 CFR 610.4(a)(3)(ii) (foreign language disclosures in marketing free credit reports).

[29] Section 305.15(b)(4). Each of these formats uses the same font and text size. The Commission notes that the final amendments do not dictate the label's dimensions but instead specify the minimum font size and line thickness for the label. *See* Appendix L.

[30] Surface area is available to bear labeling if it is technologically feasible and practicable to put labeling information on the area and the area is likely to be seen by the consumer when handled.

[31] Section 305.15(b)(5). This linear label criteria is similar to the FDA requirements for use of its linear version of the Nutrition Facts label. *See* 21 CFR 101.9(j)(13)(ii). Specifically, FDA's requirements rest on the assumption that the FDA-mandated disclosures should occupy no more than 30 percent of the total package area. *See* 58 FR 2070, 2155 (Jan. 6, 1993). Here, the standard Lighting Facts label together with the front package disclosures uses no more than seven square inches of package space. Applying the same 30 percent analysis, the 24 square inch threshold for use of the linear light bulb label is reached when this seven square inches of required labeling space exceeds 30 percent of the overall package space, *i.e.* when the surface area of the package is 24 square inches or less.

[32] 63 FR 38744 (July 20, 1998).

[33] *See* 63 FR at 38745.

[34] For packages containing more than one type of bulb (*e.g.*, a CFL and an incandescent), manufacturers should provide front-panel disclosures and a Lighting Facts label for each bulb type indicating which information applies to each bulb.

[35] 74 FR at 57954.

[36] *Id.*

[37] *See* 74 FR at 57954 n. 37.

[38] Several comments in response to the ANPR recommended that the FTC require watt-equivalence information on the label. *See*, *e.g.*, CEE, NRDC, and ACEEE. NRDC also suggested the creation of categories similar to batteries (such as A, AAA, C, etc.), to describe light output. Roundtable Tr. at 29 (Horowitz). However, the Commission declined to create an entirely new rating system. Rather, the Commission decided to focus on educating consumers about lumens, a descriptor that already existed and may have had some consumer recognition. 74 FR at 57955 n. 39.

[39] In addition, ECHIP urged the Commission to require disclosures (such as lumens) to reflect values measured with the bulbs' ballast. The amendments proposed in the NPRM would apply to bulbs with integrated ballasts exclusively. Under those amendments, manufacturers would measure lumens and other performance factors through testing of the bulbs with their ballasts. Therefore, there is no need to alter the proposed amendments in light of ECHIP's comment.

GE suggested rounding lumens on the package front to the nearest hundred (*e.g.*, 849 would become 800; 850 would become 900), along with providing a more precise lumen measurement (*e.g.*, 849) on the Lighting Facts label. To support this proposal, both NEMA and GE asserted that consumers cannot perceive differences in lumen output of ten percent or less.

Third, although CEE agreed that a watt-equivalence disclosure should not be required, it recommended allowing a voluntary watt-equivalence disclosure on the Lighting Facts label. CEE asserted that such a disclosure would assist consumers accustomed to measuring brightness in watts.

Finally, the Energy Efficiency Advocates urged the Commission to set specific watt-equivalency standards for voluntary, off-label watt-equivalence claims on the package.[40] In particular, they identified the current ENERGY STAR standards as a source for such requirements.[41] Similarly, the Energy Efficiency Advocates urged the Commission to require distinct watt-equivalency standards for comparing the brightness of high efficiency reflector lamps to incandescent reflector lamps, which differ from standard incandescent bulbs in their lumen output.[42]

Discussion: The final amendments continue to require the term "brightness" to describe the lumen rating.[43] As explained in the NPRM, both the FTC focus group and Natural Resources Canada ("NRCan") research suggest that consumers prefer the term "brightness" to "light output."[44] Indeed, participants in this proceeding, including industry members, commonly used the term "brightness" to refer to light output.[45] The Commission recognizes that the technical term for lumen output is "luminous flux," not "brightness" (or "light output"). However, as noted in the NPRM, consumers will not likely consider this technical distinction material. If manufacturers prefer to use more precise light output terminology, they may provide such information elsewhere on the package.[46]

The Commission also has decided to adopt, in part, NEMA and GE's rounding proposal by permitting rounding to the five lumen increment (*e.g.*, 813 to 815) on the package front. Although this more limited rounding likely will not facilitate the creation of lumen "classes" as proposed by NEMA and GE, it should simplify on-the-shelf lumen comparisons for consumers if all the lumen numbers on the front of the package end in 0 or 5.[47] In fact, manufacturers already routinely express lumen ratings for typical household bulbs in multiples of five.

The Commission declines to permit rounding to the nearest hundred because it is concerned that such rounding could result in lumen ratings significantly higher than actual lumen output. Indeed, while NEMA and GE suggested that consumers cannot discern ten percent differences in lumen output, this may not always be the case because a person's perception of light output varies depending on light intensity, color, and spacial considerations in the visual environment.[48]

The Commission also declines to permit watt-equivalence disclosures on the Lighting Facts label, as suggested by CEE, because allowing such disclosures could encourage consumer reliance on watts to determine brightness. However, marketers have the freedom to make voluntary watt-equivalence claims on packaging off of the label. These off-label claims also may encourage reliance on watts in the short term, but allowing marketers this flexibility strikes the right balance between providing consumers the short term watt-equivalence information they need and using the label to transition consumers in the long term to relying on lumens. Specifically, as the new labeling regime moves consumers toward lumens, marketers can alter their claims to meet consumers' changing expectations because they can adjust their watt-equivalence claims more nimbly than the Commission can change its labeling rules.

Finally, at this time, the Commission is not establishing standards for voluntary watt-equivalence claims by adopting the ENERGY STAR or any other standard. The Commission did not seek comment in the NPRM on whether a watt-equivalence standard is necessary to avoid consumer deception or on the efficacy of any particular standard. Moreover, establishing a standard is complicated by potential discrepancies in watt equivalence caused by variables such as color appearance. For example, while many 60 watt incandescent bulbs have an 800 lumen rating, a 60 watt bulb with a cooler light appearance could have a significantly lower rating. Accordingly, the Commission seeks additional comment on whether it should establish standards for watt-equivalence claims, including whether watt-equivalence claims for bulbs that do not meet such standards can be qualified to avoid deception, and if so, how such claims should be qualified.

To avoid deception, however, manufacturers must ensure they can substantiate their watt-equivalence claims. Such substantiation must take into account brightness, as well as other material factors, such as color appearance. In doing so, the ENERGY STAR watt-equivalence standards provide an important benchmark. Indeed, manufacturers making watt-equivalence claims that stray from the ENERGY STAR standard must possess another competent and reliable basis to substantiate their claims. Moreover, manufacturers that make watt-equivalence claims for bulbs with lower lumen ratings than those prescribed in the ENERGY STAR standards should strongly consider whether they need to qualify their claims to avoid deception. Put simply, deceptive watt-equivalence comparisons are subject to FTC law enforcement actions.

b. Energy Use/Efficiency

The comments in response to the NPRM addressed four primary issues

[40] For example, such standards might require that any bulb touted as a "60-watt equivalent" must produce 800 or more lumens. NEMA also advocated for the Commission to set lumen-equivalence standards.

[41] *See* ENERGY STAR CFL Program Requirements and Criteria for CFLS - Version 4.0, *available at* (*http://www.energystar.gov/ia/partners/product_specs/program_reqs/cfls_prog_req.pdf*).

[42] Because reflector lamps aim light in a specific direction, the light output from these lamps differs from that of standard incandescents. For example, Osram Sylvania's 2008 Lamp and Ballast Catalog lists a 75 watt incandescent bulb as providing over 1100 lumens, whereas it lists a reflector bulb of the same wattage as providing less than 700 lumens. *See* Osram Sylvania, Lamp and Ballast Catalog 22 (2008), *available at* (*http://assets.sylvania.com/assets/documents/Complete-Catalog.b176dbb1-d6e0-40f0-ab92-e768e58f5dc1.pdf*).

[43] Gainesville Regional Utilities recommended that the label also contain a lumen scale to help consumers understand brightness. However, a lumen scale would take up too much package space. As discussed in the NPRM, the Commission will consider developing a lumen scale for consumer education efforts. 74 FR at 57961.

[44] 74 FR at 57954 nn. 37-8.

[45] *See*, *e.g.*, Roundtable Tr. at 32, 35, 41, 67, and 121. *See also* NEMA and NRDC comments.

[46] NEMA noted that solid-state lighting manufacturers also typically disclose the directional light of reflector and PAR lamps (measured in candelas) and suggested that such a disclosure may be necessary for these lamps. The Commission seeks additional comment on whether to amend the Appliance Labeling Rule to include a directional light disclosure. Nothing in the Rule, however, prohibits manufacturers from providing this information off the label, so long as it is substantiated.

[47] The FDA has recognized that rounding can "make a label easier for a consumer to review and understand." 58 FR 2079, 2161 (Jan. 6, 1993).

[48] *See* Gunter Wyszecki, W. S. Stiles, *Color Science: Concepts and Methods, Quantitative Data and Formulae* 567-70 (2d ed. 1982). In addition, even assuming such ten percent differences are immaterial, rounding to the nearest 100 lumens would lead to lumen ratings with a greater than ten percent differential for bulbs with low light output (*e.g.*, bulbs rounded from 351 to 400 lumens).

related to the proposed energy use disclosure: 1) whether operating cost is the best energy use descriptor; 2) whether to require a five-star rating system; 3) whether to permit a lumens per watt disclosure on the Lighting Facts label; and 4) where to locate any wattage disclosure. Each of these issues is addressed below.

i. Operating Cost

In its NPRM, the Commission proposed requiring estimated annual operating cost as the primary energy disclosure on the front package panel and on the rear (or side) panel Lighting Facts label. Specifically, the NPRM required that the front panel display "estimated energy cost" in an annual dollar figure (*e.g.*, $7.49 per year).[49] The proposed Lighting Facts label would provide this same cost information, along with the rate and usage assumptions used to calculate the disclosure (*i.e.*, three hours per day and 11.4 cents per kWh),[50] and a notice that "Your costs will depend on your rates and use."

The Commission provided three reasons for choosing annual energy cost as the primary energy disclosure. First, estimated annual energy cost provides a simple way to convey a bulb's energy usage. Second, in the label study, energy-cost information performed better than a five-star rating system and a lumens per watt disclosure at communicating energy usage. Finally, unlike efficiency ratings (*e.g.*, lumens per watt or a five-star system), an energy-cost disclosure should help consumers avoid buying bulbs that are brighter than necessary, and therefore, save energy.[51]

Comments: Several commenters supported the Commission's proposal to describe energy use via an operating-cost disclosure. For example, CEE stated that its members have extensive experience with communicating energy information and supported the operating-cost disclosure.[52] The Energy Efficiency Advocates also strongly supported the cost disclosure and concurred with the rate and usage assumptions used to calculate the estimate. GE found the cost disclosure and rate and usage assumptions acceptable, but, along with NEMA, suggested that the FTC shorten the sentence accompanying the disclosure to read "Will vary by your rates and use."

NEMA, however, raised concerns about the operating-cost disclosure. It questioned the disclosure's usefulness and long-term accuracy because electricity rates and usage vary by region and consumer and change over time. In NEMA's view, unless shoppers make a conscious effort to review the explanatory rate assumption language appearing on the Lighting Facts label, they will view the disclosed cost as their actual operating cost. In addition, NEMA stated that "tracking the cost of power for accuracy and competitive fairness would be costly and laborious," which the Commission understands to mean that manufacturers frequently would have to adjust the rates used for the label. Thus, NEMA argued, the Commission should not require an operating-cost disclosure.

Discussion: The final amendments maintain the operating-cost disclosure.[53] First, the operating-cost disclosure is an effective comparative tool that will allow consumers to easily compare competing products across bulb types. Second, similar to the Commission's EnergyGuide label for appliances, the cost is disclosed as an "Estimated Energy Cost," clarifying that it is not their actual operating cost. Consumers seeking additional information about the rate assumption used to calculate this estimate can find it on the Lighting Facts label. Finally, the Commission finds that these benefits outweigh the disadvantages, including the need to adjust the rate assumption periodically over time.

The final amendments include a minor change to the electricity cost rate used for the label. Instead of the proposed 11.4 cents per kWh, the amendments require the use of 11 cents per kWh. This simple, rounded cost figure should be easier for consumers to understand.[54]

Finally, consistent with NEMA and GE's suggestion, the Commission has shortened the explanatory cost information on the label.[55] Instead of "Your cost will depend on your rates and use," the final amendments require the language "Cost depends on rates and use." This revised language will provide the same message while using less space on the package.[56]

ii. Five-Star Rating System

In its NPRM, the Commission did not propose using a five-star rating system for the energy disclosure.[57] While the research suggested some benefits, the Commission identified five problems with the five-star system.[58] First, the system did not perform better than energy cost in helping study respondents answer energy questions. Second, the star system may have a greater tendency to convey inadvertent quality representations. Third, the five-star system could create confusion over time because some bulbs rated as efficient today may be rated as inefficient in the future. Fourth, in some contexts, the five-star system's interaction with ENERGY STAR may cause confusion. Fifth, as noted above (note 51), efficiency ratings sometimes can lead consumers to buy bulbs that are brighter, and thus use more energy, than is necessary.[59]

Comments: The comments revealed mixed opinions about the adoption of a categorical (*i.e.*, five-star) energy efficiency descriptor. CEE recommended against any star system because consumers might wrongly view the disclosure as an indicator of overall

[49] 74 FR at 57955.

[50] The general consensus at the Roundtable was that three hours per day is a reasonable estimate. Roundtable Tr. at 54. The electricity cost figure is based on 2009 DOE data. *See* 74 FR 26675 (June 3, 2009). Consistent with the FTC's approach on the EnergyGuide label, 16 CFR 305.10, the Commission would change the cost rate every five years based on DOE data. This approach minimizes label changes while ensuring that cost information reflects a reasonable estimate of national average electricity rates. However, as with appliance labeling, the Commission may revisit the energy-cost estimate more frequently should such costs change significantly.

[51] In many cases, a higher energy-efficiency rating for a particular bulb equates to lower energy use, and thus, lower energy cost—but not always. For example, a bright bulb with a high efficiency rating may cost much more to operate than a dimmer bulb with a lower efficiency rating.

[52] In addition, CEE urged the Commission to develop standard definitions for terms like "energy savings" and "energy efficient" to prevent marketers from using those terms to describe products that are not energy efficient.

[53] Section 305.15(3)(ii).

[54] GE suggested that the FTC indicate whether operating costs should be "rounded up or down." Manufacturers should round costs to the nearest cent.

[55] The final amendments, however, do not contain standard definitions for advertising terms such as "energy savings" or "energy efficient" as suggested by CEE. The FTC declines to permanently fix the meanings of these terms. Under FTC law, advertising terms have the meaning that reasonable consumers ascribe to them, which can change over time. Thus, marketers must be cognizant of the meaning consumers take from advertising terms and must substantiate any expressed or implied advertising claims. *See, e.g.*, FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C.110, 174 (1984).

[56] Rubinfield recommended that the Commission also require a scale on the label to further explain a bulb's estimated annual operating cost, either in addition to, or in place of, the proposed color appearance scale. An additional scale, however, is not feasible because there is room for only one scale on the label. Moreover, given that the label already includes a clear, prominent operating-cost disclosure, the benefits of an operating-cost scale do not outweigh the benefits of the color appearance scale, which are discussed in section V.B.2.d.

[57] The Commission reached a similar conclusion in considering a star rating for appliance EnergyGuide labels. 72 FR 6836, 6844-6846 (Feb. 13, 2007).

[58] 74 FR at 57956.

[59] *See* n. 51, *supra*.

bulb quality and because consumers might confuse the star-rating system with the ENERGY STAR logo. However, the Energy Efficiency Advocates supported the star rating. Specifically, they argued that the FTC's research demonstrates that a five-star system would complement the cost disclosure. In their view, the system would not only help consumers identify energy efficient bulbs, but would also be more useful and trustworthy than other disclosures. The Energy Efficiency Advocates noted these findings were consistent with research indicating that categorical labeling helps motivate consumers to identify and purchase higher efficiency products. With regard to consumer inferences about quality, they noted that all descriptors in the FTC study performed poorly on the quality question and that consumer education will be necessary regardless of the descriptor.

The Energy Efficiency Advocates also questioned the FTC's interpretation of its consumer research. In particular, they noted that where respondents viewed labels bearing the ENERGY STAR logo, the FTC study found no differences in responses between the five-star rating system and other disclosures. The five-star rating system only performed poorly compared to the other disclosures where none of the labels in the question had an ENERGY STAR logo. In their view, the former scenario better represented the real shopping environment. Finally, they noted that the FTC's concerns about updating a star rating system over time also applies to any comparative label system, including those used for the FTC's EnergyGuide program.

Discussion: The Commission declines to adopt a five-star rating system.[60] While the Energy Efficiency Advocates raised important points, the Commission's NPRM addressed many of these issues.

First, the Commission's study raised valid concerns regarding the five-star system communicating bulb quality to consumers. Although all treatments (*i.e.*, label designs) in the study yielded incorrect answers about quality, the study's main purpose was to identify performance differences between various label designs and not the significance of overall response rates. Looking at the differences between treatments, the star rating caused confusion more often than other energy disclosures.[61]

Second, the Commission finds that a five-star system could cause confusion for consumers over time. For example, DOE's upcoming EISA-mandated efficiency standards would drastically alter any rating system developed by the Commission at this time. As a result of such changes, bulbs rated as four stars today may rate only one or two stars in the near future. Such changes could confuse consumers.

Third, a star rating system would be more difficult to maintain than an operating-cost disclosure. Whereas changes to operating-cost estimates simply require mathematical calculations, changes to categorical rating systems require subjective judgments. For instance, the European Union recently had difficulty reaching consensus on how to recalibrate the rating categories for appliances in its energy-labeling program.[62] This experience demonstrates the significant policy challenges that can complicate efforts to update rating systems.

Finally, the Commission remains concerned that consumers would confuse a star rating with ENERGY STAR. In the study, the star rating system was more likely than other disclosures to create confusion with ENERGY STAR when no ENERGY STAR logo appeared on the product.[63] The Energy Efficiency Advocates assert that light bulbs ordinarily are marked with the ENERGY STAR logo and that the study did not show confusion with ENERGY STAR in that circumstance. However, because ENERGY STAR currently covers only CFLs and LEDs, consumers will encounter many bulb packages without the ENERGY STAR logo. Indeed, if a retailer groups its bulbs by technology, a consumer examining a shelf of halogen bulbs will not see any products marked with the ENERGY STAR logo.[64] As indicated in the study, these consumers may confuse a star rating with ENERGY STAR.

Importantly, the FTC label aims to complement, not detract from, the ENERGY STAR rating. As the Commission explained in its NPRM, the combination of the FTC label and the ENERGY STAR program provides a sound framework for conveying energy information to consumers and promoting energy efficiency. Specifically, the FTC label displays detailed energy information about bulbs regardless of energy efficiency, while ENERGY STAR provides the U.S. Government's imprimatur for high efficiency products. This system, as a whole, provides a robust source of energy information for consumers.[65]

iii. Lumens Per Watt

In its NPRM, the Commission did not propose requiring lumens per watt on the Lighting Facts label because, in its study, respondents viewing lumens per watt information were more likely to provide incorrect answers to most energy use and efficiency questions than respondents viewing other descriptors. In addition, lumens per watt information could lead consumers to choose brighter bulbs than needed.[66] Lumens per watt, however, is a common efficiency metric used in the lighting industry and serves as the yardstick for DOE efficiency standards and performance criteria in the ENERGY STAR program. It also appears on the label developed by DOE for its LED program. Therefore, the Commission sought comment on whether to allow or require a lumens per watt disclosure on the Lighting Facts label.

Comments: Most comments recommended a voluntary lumens per watt disclosure on the Lighting Facts label. For example, CEE agreed that the FTC should not require lumens per watt, but believed a voluntary disclosure should be permitted because lumens per watt is the standard metric for efficiency within the lighting

[60] Earthjustice asserted that EPCA requires comparative efficiency information such as a star-rating system. EPCA, however, grants the Commission discretion to require bulb disclosures "*the Commission deems necessary* to enable consumers to select the most energy efficient lamps which meet their requirements." 42 U.S.C. 6294(a)(2)(D)(i) (emphasis added). The Commission does not deem this particular disclosure necessary for reasons outlined here.

[61] Specifically, as noted in the NPRM, when respondents were asked to identify the most reliable bulb, those who viewed the star descriptor on the front panel were somewhat less likely than those who viewed other energy descriptors to provide correct responses, which were "can't tell" or "not sure." The percentages of respondents who answered correctly, grouped by front-panel energy descriptor, were: energy cost (29.36 percent), lumens per watt (26.16 percent), and stars (21.83 percent). 74 FR at 57956 n. 51.

[62] Specifically, policymakers had to determine whether to recalibrate their appliance ratings by lowering the A-G grade (*e.g.*, A to C) on less energy efficient appliances, or creating new higher grades (*e.g.*, A++) for more energy efficient appliances. *See* "EU energy efficiency labelling: a debate that rages from A to G," Guardian.Co.Uk., Dec. 9, 2009, *available at* (*http://www.guardian.co.uk/environment/blog/2009/dec/09/energy-efficiency-labelling/print*).

[63] 74 FR at 57956 n. 52.

[64] Currently, halogen bulbs do not qualify as ENERGY STAR products. *See* (*www.energystar.gov/index.cfm?c=products.pr_find_es_products*) (listing ENERGY STAR covered lighting products).

[65] The Commission also rejects Green Seal's request to allow manufacturers to voluntarily place their certification logo on the label next to the ENERGY STAR logo. The appearance of such a logo on a required government label may imply government endorsement that does not exist and detract from ENERGY STAR. Nothing in the final amendments prohibits the use of certification marks on the package. However, the manufacturer must have substantiation for any express or implied claims generated by such certifications. *See* 16 CFR Part 260 (FTC's "Green Guides").

[66] 74 FR at 57956.

industry. The Energy Efficiency Advocates agreed, predicting that consumers will have greater recognition of and interest in lumens per watt in the future, especially after implementation of EISA's public education programs. OSRAM also favored a voluntary lumens per watt disclosure, asserting that this will eventually become the preeminent method for communicating energy efficiency for general service lamps. OSRAM explained that, like "miles per gallon" for fuel economy, lumens per watt allows consumers to compare efficiency across product types and brands.

Discussion: Despite these comments, the final amendments do not allow lumens per watt on the Lighting Facts label. The FTC designed its Lighting Facts label for typical consumers, and, as demonstrated by the FTC's research, the inclusion of lumens per watt information likely will not assist these consumers. As detailed in the NPRM, lumens per watt performed poorly in helping respondents answer energy use and efficiency questions.[67] Moreover, because consumers are not yet familiar with the basic concept of lumens, the more complex lumens per watt disclosure likely would be ignored or cause confusion, hindering consumers' transition to using lumens. Additionally, as discussed above, lumens per watt could lead consumers to choose bulbs that are brighter than needed. Nevertheless, nothing in the Rule prohibits manufacturers from providing lumens per watt information elsewhere on their packaging or in other marketing materials. In addition, once consumers become more familiar with the concept of lumens, the Commission can revisit whether to require, or allow, lumens per watt on the label.[68]

iv. Wattage

In its NPRM, the Commission proposed requiring wattage on the Lighting Facts label and not on the front of the package.[69] The Commission explained that, presently, consumers use wattage as a proxy for brightness. Therefore, a mandatory wattage disclosure on the package front could impede consumers' transition to lumens as the primary brightness indicator for high efficiency bulbs. At the same time, as noted in the NPRM, the proposed amendments retained a less prominent wattage disclosure on the Lighting Facts label because precise wattage information may be important to consumers seeking to ensure a bulb does not exceed the maximum wattage allowable for a particular fixture.

Comments: Gannon argued that by making the wattage disclosure less prominent, the Commission will make it difficult for consumers to determine whether a bulb meets the wattage ratings of certain lamp fixtures. Specifically, Gannon recommended that wattage appear as the second disclosure on the Lighting Facts label immediately after lumens.

The Energy Efficiency Advocates argued that the Commission should change the proposed "energy used" descriptor for wattage to a more technically correct term such as "power" or "electricity used." They argued that the proposed wording perpetuates consumer confusion about the difference between power and energy.[70] In contrast, both NEMA and GE found "energy used" acceptable.

Discussion: The final amendments continue to require wattage as the fifth disclosure on the Lighting Facts label.[71] As discussed in the NPRM, many consumers use wattage as a proxy for brightness.[72] To the extent the ranking of a descriptor on the Lighting Facts label makes it more likely that consumers will view that descriptor, the other descriptors listed before watts on the label—brightness, energy cost, life, and color appearance—are more important attributes for consumers to consider when choosing high efficiency bulbs. In any event, there is no evidence that the hierarchy of descriptors on the Lighting Facts label materially impacts consumers' perception of one descriptor over another.

The final amendments continue to require the term "energy used" to describe watts on the label.[73] While the term "power" is technically accurate, "energy used" has appeared on the label for nearly two decades without any apparent problems. In addition, some consumers might incorrectly interpret the term "power" to relate to the strength of light output.

c. Bulb Life

In its NPRM, the Commission proposed a bulb life disclosure stated in years (rounded to the nearest tenth of a year, *e.g.*, 1.1 years), which would be calculated assuming usage of three hours per day.[74]

Comments: Several commenters supported the proposed bulb life disclosure.[75] In particular, CEE noted that this approach ensures that all manufacturers would calculate life based upon the same assumptions.

The Energy Efficiency Advocates, however, objected to a bulb life disclosure stated in years, recommending a total-hours disclosure. First, they asserted that predicating a life disclosure on a usage assumption is misleading because such an assumption fails to account for substantial differences in usage among consumers. Second, they asserted that a disclosure stated in hours is more effective in conveying differences in bulb life than a disclosure in years.

Discussion: Consistent with the NPRM, the final amendments require a bulb life disclosure stated in years rounded to the nearest tenth calculated assuming bulb usage of three hours per day.[76] For the reasons stated in its NPRM, the Commission finds that this life disclosure will be more useful to consumers than a disclosure expressed in total hours. In particular, in the study, respondents showed a slight preference for life in years over life in hours and the NRCan research noted that consumers have difficultly relating hours of use to bulb life.[77]

The Energy Efficiency Advocates' observation that each consumer's bulb usage differs is undoubtedly correct. However, disclosure of the three-hour per day usage assumption on the Lighting Facts label will allow consumers to compare that assumption to their own expected use. Moreover, by rounding to the nearest tenth of a year, the disclosure will communicate significant differences in bulb life to consumers. For example, consumers will be able to choose between bulbs

[67] 74 FR at 57956.

[68] QSC and MPCA recommended that the final amendments require manufacturers to disclose a bulb's "power factor" rating on the label as a further indication of energy efficiency. Power factor, which is expressed as a number between 0 and 1, is a measure of the efficiency with which a device uses the power made available to it from the electric grid. Because of the way residential energy costs are calculated, a bulb's power factor rating does not impact a consumer's residential energy costs. However, the widespread use of bulbs with high power factor ratings could positively impact the overall efficiency of the electric grid and, thus, have a beneficial effect on the environment. It is not clear from these comments whether consumers understand this term or whether a bulb's power factor rating is, or will become, important to consumers. Accordingly, the Commission is not requiring this disclosure. However, the Commission seeks comment on whether this disclosure should be reconsidered if the Commission reopens the rulemaking as permitted by EPCA. *See* section V.A.

[69] 74 FR at 57954.

[70] The Energy Efficiency Advocates noted that, technically, wattage is a measure of power while kWh is a measure of energy.

[71] Section 305.15(b)(3)(v).

[72] 74 FR at 57952.

[73] *Id.*

[74] 74 FR at 57956-7; *see* Prototype Label 6.

[75] CEE, GE, and NEMA comments.

[76] Section 305.15(b)(3)(iii).

[77] 74 FR at 57957.

with stated lives of 1.7 years and 1.2 years. Finally, relatively small differences in bulb life that may be captured better by a total-hours disclosure likely will become less important to consumers as high efficiency bulbs, some of which can last over a decade,[78] become more prevalent.[79]

d. Color Appearance

In its NPRM, the Commission proposed a color appearance disclosure on the Lighting Facts label consisting of a black and white scale labeled "warm" on one end and "cool" on the other.[80] The scale also included the correlated color temperature of the bulb, measured in Kelvin.[81] As discussed in the NPRM, this color appearance scale addresses the fact that some bulbs have a warm, yellow appearance, while others have a cooler, white or blueish appearance.[82] The Commission proposed a scale to describe color appearance because, in the FTC label study, a scale performed better than word descriptors commonly used in bulb marketing such as "soft white" or "daylight." However, the NPRM stated that manufacturers could use such descriptors elsewhere on the package.

In addition, the Commission sought comment on whether the final amendments should require the scale be printed in color. In particular, the Commission sought comment on the costs color printing would impose on small manufacturers. Finally, the Commission asked whether this disclosure should be titled "Light Appearance" instead of "Color Appearance" to guard against the impression that the disclosure pertains to colored lights (*e.g.*, red or green).

Comments: No comments objected to requiring a color appearance scale on the Lighting Facts label. Several, however, urged the Commission to use the term "light appearance" instead of "color appearance."[83]

The comments also offered several specific suggestions about the scale. First, NEMA preferred a scale printed in color, but suggested that manufacturers have the option of printing in black and white. Likewise, CEE suggested that a scale printed in color be optional. Second, both CEE and NEMA suggested that the highest and lowest Kelvin values appear on the ends of the scale, along with mid-range Kelvin value in the center. More specifically, NEMA stated that the numbers "2700K, 4100K and 6500K" should appear below the scale to clarify the possible range and, in its view, protect against manufacturers trying to enhance the perception of a bulb's color appearance by manipulating the length of the scale. Third, NEMA suggested that the actual color temperature measured in Kelvin appear in bold on the top of the scale, rather than on the bottom of the scale as proposed. Finally, NEMA suggested that the Commission change the descriptors at the ends of the scale to "warm white" and "cool white."

Discussion: As suggested by the comments, the final amendments use the term "Light Appearance" instead of "color appearance" to describe the disclosure on the label.[84] This change will minimize the possibility that consumers will interpret the disclosure to convey information about colored lights.

While there may be some benefit to a color version of the scale, the final amendments require the black and white version[85] for two reasons. First, a single version ensures consistency, which is essential to building consumer recognition and confidence in the Lighting Facts label. Indeed, if the final amendments permit a scale printed in color, consumers may not understand why one package has a color scale and another has only black and white.[86] Second, the black and white label requires less package space. As discussed in section V.B.1, this is an important consideration because of the limited space available for labeling on many bulb packages.

In addition, the final amendments do not require Kelvin measurements at the endpoints and middle of the scale. Rather, consistent with the NPRM, the final amendments maintain the "warm" and "cool" monikers at the ends of the scale, which will correspond to 2600K and 6600K, respectively.[87] Given the small size of the scale, additional Kelvin numbering could make it difficult for consumers to identify the Kelvin number applicable to the bulb.[88] Moreover, the final amendments require the light appearance scale to be proportional in size to the width of the label. Accordingly, the scale will be sufficiently uniform in size to prevent manufacturers from manipulating it in a way that could mislead consumers.

Finally, the amendments do not label the ends of the scale "cool white" and "warm white" as suggested by NEMA and GE. Industry members already use these terms to refer to the specific color temperatures, 3000K and 4100K, respectively.[89] As noted above, however, the ends of the scale correspond with 2600K and 6600K. Thus, a label that assigns these terms to the low and high end of the scale would in effect give them new meanings, potentially causing confusion.

e.Voltage

In its NPRM, the Commission proposed a voltage disclosure on the Lighting Facts label consistent with current labeling requirements.[90] Specifically, voltage only would be required on the label if it differed from the predominant U.S. residential voltage of 120.[91]

Comments: The Commission received no comments on this issue.

[78] DOE noted that it is working to improve bulb life testing methodologies for LED lamps, which can last for many years and thus present unique testing challenges. The Commission strongly recommends that manufacturers use DOE guidance as it becomes available to substantiate life claims for LEDs.

[79] ECHIP urged the Commission to consider a bulb life disclosure that shows the number of hours a bulb will operate before it loses 50 percent of its initial lumen rating. ECHIP did not provide any evidence that bulb light output diminishes significantly over time, nor did it suggest a metric for measuring any such reduction in light output. Therefore, the Commission declines to adopt this disclosure.

[80] 74 FR at 57957.

[81] Light color appearance is evidenced scientifically by correlated color temperature, which is measured in Kelvin ("K"). Such color measurements generally range between 2700K and 6500K. Bulbs with lower measurements (*e.g.*, 2700K) produce light that has a yellowish appearance. Bulbs with higher measurements produce light that is whiter (*e.g.*, 4100K) or blueish (*e.g.*, 6500K). Thus, a higher correlated color temperature actually results in a cooler bulb appearance.

[82] As discussed in the NPRM, many consumers may not understand the concept of color appearance. However, they are likely to learn about, and place more emphasis on, color appearance as new products emerge that provide a wider variety of color temperatures. Indeed, the research suggested that once respondents became aware of the concept of color appearance, it became an important issue to them. 74 FR at 57957 n. 56.

[83] CEE, NEMA, and GE comments.

[84] Section 305.15(b)(3)(iv).

[85] Section 305.15(b)(4)(i).

[86] The Commission also considered requiring the color version on all labels but rejected such a course because it would force manufacturers to use full color printing on the back or side package panels for all their covered products. The benefit yielded by the color scale does not justify this burden.

[87] Section 305.15(b)(3)(iv).

[88] The Commission is not moving the Kelvin number disclosure to the top of the scale as suggested by NEMA. The number will be more prominent below the scale because it will be the only information listed there. If the number were moved to the top of the scale, a particularly low or high number could crowd the terms "warm" or "cool," respectively.

[89] ANSI C78.376 ("American National Standard for Specifications for the Chromaticity of Fluorescent Lamps") uses "warm white" to refer to a 3000 K bulb and "cool white" to refer to a 4100 K bulb. *See also* 74 FR 7894, 7896 n. 9 (Feb. 20, 2009).

[90] 74 FR at 57958. Voltage is a measure of the electromotive force of electricity. *See* discussion at 59 FR 25176, 25184 (May 13, 1994).

[91] Section 305.15(b)(3)(vii).

Discussion: The final amendments continue to require manufacturers to disclose voltage on the Lighting Facts label only if it is not 120.

f. Mercury

In its NPRM, the Commission proposed a mercury disclosure for CFLs on the Lighting Facts label to warn consumers of possible hazards from broken bulbs.[92] That disclosure stated: "Contains Mercury Hg [encircled]: Manage in accordance with local, state, and federal disposal laws. For information: epa.gov/bulbrecycling or 1-800-XXX-XXXX."[93] The proposed language is similar to CFL disclosures currently required by the ENERGY STAR program and to those recommended by NEMA.[94]

The Commission intended the proposed amendments to work in conjunction with state mercury disclosure requirements, to the extent possible. Therefore, the Commission sought comment on the impact of the proposed disclosures on existing state requirements, including whether, how, and why the Commission should address any inconsistencies between its proposed disclosure and state requirements.

Comments: Commenters agreed that the final amendments should require a mercury disclosure on the Lighting Facts label. Several, however, proposed revising the disclosure. CEE recommended adding the term "recycle" to remind consumers of the environmental benefits of recycling CFLs. NEMA, GE, and EPA recommended referencing "clean-up" procedures. NEMA and GE suggested: "For Clean-Up and Disposal see: (*www.lamprecycle.org*) or 1-800-XXX-XXXX."

NEMA and GE favored giving manufacturers the option of including the industry website along with, or in lieu of, the EPA website proposed by the Commission because the industry website, (*www.lamprecycle.org*), has existed for ten years, is well known, and was redesigned recently to make it more consumer friendly. Similarly, NEMA and GE recommended that manufacturers have the option to include their toll-free numbers with, or in lieu of, EPA's toll-free number.

EPA suggested revisions to encompass "the entire lifecycle of the lamp and breakage." Specifically, EPA proposed, "Contains Mercury: For proper handling, disposal, or clean-up, see *epa.gov/cfl*."Additionally, it supported inclusion of an EPA website, but recommended the soon to be developed "*epa.gov/cfl*." It also cautioned against including any toll-free telephone number because funding for public and private hotlines is uncertain.

Commenters disagreed about the inclusion of the "Hg" symbol. EPA and state regulators objected to using the symbol, explaining that they have received feedback indicating that consumers "ha[ve] no idea what the Hg symbol means." NEMA and GE supported the symbol because NEMA members already provide it on CFL packages and because it is recognized internationally.

In addition, IMERC, QSC, and MPCA recommended increasing the type size of the disclosure.[95] Based on its members' regulatory experience, IMERC stated that "any font size less than 8 to 10 point font is not legible to the average consumer." Therefore, all three commenters recommended ten-point type for the entire disclosure, as generally required by state laws.

The commenters expressed opposing views on state preemption.[96] Commenters representing states—MPCA, QSC, and IMERC—asserted that the proposed amendments would not preempt state disclosure laws. On the other hand, NEMA expected that to the extent the Commission's amendments differed from state labeling requirements, it would preempt them.

Discussion: In response to the comments, the final amendments revise the mercury disclosure on the Lighting Facts label to read: "**Contains Mercury** For more on clean up and safe disposal, visitepa.gov/cfl."[97] In doing so, the Commission made a number of changes suggested by commenters, declined to make others, and attempted to minimize potential conflicts with state requirements, as discussed below.

The Commission agrees with commenters CEE, NEMA, and GE that the mercury disclosure should alert consumers to follow certain steps when cleaning up and disposing of CFLs because improper clean up or disposal can release mercury vapor, which EPA describes as "harmful to human and ecological health."[98] The final disclosure requirement specifically addresses "clean up and safe disposal" to alert consumers to this risk.[99]

The revised disclosure omits any reference to a toll-free number and contains a link to a new EPA website. The Commission agrees with EPA's comment that, due to the uncertainty of future funding, a toll-free number should not be included in the disclosure. Moreover, the final disclosure directs consumers to the EPA website, which the EPA has determined is most appropriate. The disclosure does not include an industry website, as proposed by NEMA and GE, because EPA's expertise on environmental issues, as well as safe clean up and disposal, puts it in the best position to provide consumers with this important information.[100]

Additionally, the final amendments do not include CEE's suggestion that the disclosure instruct consumers to "recycle" CFLs. The Commission is concerned that the term "recycle" could lead consumers to dispose of CFLs in home recycling bins, a practice that may pose an environmental hazard from potential bulb breakage.[101] Similarly, the final amendments do not use the term "handle" in addition to "clean up" and "disposal" as suggested by EPA. In the Commission's experience, vague terms such as "handle" do not add to consumer understanding.

The disclosure no longer requires the "Hg" symbol in light of the states' and EPA's comments that consumers do not

[92] Broken CFLs can release mercury vapor. Although manufacturers have greatly reduced the amount of mercury in CFLs, they have not eliminated it. CFLs contain, on average, about 5 milligrams, or 1/100th of the amount of mercury found in a mercury fever thermometer. *See* (*http://www.epa.gov/epawaste/hazard/wastetypes/universal/lamps/basic.htm*).

[93] 74 FR at 57958. The NPRM also proposed a mercury disclosure on the product, which is discussed in section V.C.1.

[94] ENERGY STAR requires manufacturers to label their packages with: (1) the symbol "Hg" within a circle; (2) "Lamp Contains Mercury;" and (3) either (*www.epa.gov/bulbrecycling*) or the industry site (*www.lamprecycle.org*). NEMA recommends the following language:"Hg [encircled] - LAMP CONTAINS MERCURY; MANAGE IN ACCORDANCE WITH DISPOSAL LAWS; See (*www.lamprecycle.org*)."

[95] The NPRM proposed 8 point type for the term "Contains Mercury," 6 point for the "Hg" symbol, and 7 point for the remaining disclosure language.

[96] IMERC noted that the following states require mercury disclosures on CFL packages: Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, Washington, Maryland, and Oregon.

[97] Section 305.15(b)(3)(vii).

[98] EPA, Mercury Releases and Spills, *available at* (*www.epa.gov/hg/spills*).

[99] ECHIP recommended requiring disclosure of the amount of mercury in a bulb. The Commission declines to do so because there is no evidence in the record demonstrating that this information would help consumers.

[100] IMERC recommended retaining the proposed disclosure's reference to "local, state, and federal" laws. However, the Commission concludes that the reference is unnecessary because the EPA website will provide consumers with legal compliance information.

[101] EPA's website warns that because breaking CFLs will release mercury into the environment, consumers should recycle the bulbs through a "household hazardous waste collection and recycling program[.]" *See* "Mercury-Containing Light Bulb (Lamp) Frequent Questions,"*available at* (*www.epa.gov/epawaste/hazard/wastetypes/universal/lamps/faqs.htm*).

understand the symbol. However, manufacturers may voluntarily include the symbol in the disclosure after the term "Contains Mercury." This flexibility will allow manufacturers to comply with state and ENERGY STAR requirements.[102]

The final amendments also increase the disclosure's minimum size to a uniform ten-point type.[103] This minimum type size harmonizes the disclosure with several states' requirements.[104] As discussed above, the final amendments attempt to minimize conflicts with state requirements while providing disclosure requirements that are practical and benefit consumers.

g. Color Rendering Index (Not Included on Label)

In its NPRM, the Commission did not propose a Color Rendering Index ("CRI") disclosure.[105] CRI measures, on a scale of 0 to 100, how the color of an object appears when illuminated by a bulb in comparison to a reference light source of the same color temperature.[106] In short, a higher CRI rated bulb renders an object's color better than a lower rated bulb. As discussed in the NPRM, comments at the Roundtable and in response to the ANPR indicated that a CRI disclosure on the label would not help consumers. Specifically, commenters noted that, starting in 2012, EISA mandates a minimum CRI rating of 80 for all bulbs[107] and consumers are not able to discern material differences in CRI above this threshold.[108] Therefore, the Commission did not propose a CRI disclosure, but sought comment on whether to allow a voluntary CRI disclosure on the Lighting Facts label.

Comments: NEMA and CEE supported a voluntary disclosure. NEMA asserted that CRI will gain in importance with emerging LED technology, but did not explain why. CEE stated that manufacturers should have the discretion to include a CRI rating on the label. However, it did not explain why a voluntary disclosure would benefit consumers, and agreed that CRI did not warrant a mandatory disclosure. CEE also noted that the National Institute of Standards and Technology ("NIST") is researching a color rendering measurement that may be superior to CRI.

Discussion: The final amendments do not permit a CRI disclosure on the Lighting Facts label. As explained in the NPRM, consumers will not benefit from a CRI disclosure after the minimum CRI rating of 80 goes into effect in 2012. Furthermore, CEE noted that NIST is researching an alternative measurement for color rendering. If NIST develops such a measurement, the Commission will consider whether it sufficiently benefits consumers to warrant placing it on the label. In the meantime, nothing prohibits manufacturers from making substantiated off-label CRI claims on the package.

h. Total Lifecycle Cost (Not Included on Label)

In its NPRM, the Commission did not propose a lifecycle cost disclosure on the label.[109] Several Roundtable participants noted that calculating accurate lifecycle cost is impractical because of the uncertainty and fluctuation of costs that such a disclosure would be based on, such as retail and disposal costs.[110]

Comments: The Commission received no comments on this issue.

Discussion: The final amendments do not include a total lifecycle cost disclosure. Marketers making lifecycle cost claims must possess competent and reliable scientific evidence to support their claims.

i. Other Disclosures (Not Included on Label)

Three commenters suggested requiring additional disclosures not addressed in the NPRM.

Comments: First, Lutron Electronics suggested a label disclosure indicating whether a bulb can be dimmed. It asserted that such a disclosure would reduce consumer disappointment with high efficiency bulbs, many of which do not dim. In contrast, NEMA asserted that a dimmer disclosure would unduly complicate the label and cause consumer confusion.[111] Second, MPCA and QSC recommended requiring a lead-content disclosure because lead is a toxic substance currently found in most bulbs. Finally, Buchanan asked whether cold temperatures negatively affect CFL performance, and suggested requiring a cold-weather disclosure if that is the case.

Discussion: The Commission does not adopt these proposed disclosures. Although some consumers may value dimmer information, there is insufficient evidence to conclude that the benefits of a dimmer disclosure justify using scarce label space. Manufacturers can make a dimmer disclosure elsewhere on the package, if necessary, to inform consumers about product performance.

The Commission is also not requiring a lead-content disclosure. Although most light bulbs contain lead, unlike for the mercury in CFLs, the Commission has not received any details concerning any consumer risk from lead in bulbs or the benefits of any lead disclosure. Moreover, guidance published by EPA and the United States Consumer Product Safety Commission concerning lead in the home does not reference any threat from light bulbs.[112] Therefore, the final amendments do not require a lead disclosure. However, the Commission seeks further comment on this issue to determine if such a disclosure is warranted.

Finally, because the Commission did not receive any comments demonstrating that cold temperatures diminish CFL performance, the final amendments do not require a cold-weather performance disclosure.

3. Off-Label Package Claims

Manufacturers regularly make off-label performance and efficiency claims on their packaging to market their bulbs. The NPRM expressed concern that these claims could undermine label disclosures regarding bulb life and operating cost.[113] For example, a package could prominently claim a five-year bulb life, assuming two-hour per day use, contradicting the on-label life disclosure based upon a three-hour per day assumption.

To address this problem, the Commission proposed requiring manufacturers making off-label claims about life or energy cost to: 1) clearly and conspicuously disclose the assumptions underlying their claim; and

[102] ENERGY STAR currently requires the "Hg" symbol on packaging for qualifying CFLs. *See ENERGY STAR Program Requirements and Criteria for CFLs - Version 4.0, available at* (*www.energystar.gov/ia/partners/product_specs/program_reqs/cfls_prog_req.pdf.*) In addition, IMERC noted that Connecticut requires the Hg symbol. *See* Conn. Gen. Stat. § 22a-619(g)(7).

[103] *See* Prototype Label 6.

[104] *See, e.g.,* Vt. Stat. Ann. tit. 10 § 7106(d) (Vermont); La. Admin. Code tit 33, § 2713(F)(2) (Louisiana); 06-096 Me. Code. R. Ch. 870 § 5(B) (Maine); 12-030-030 R.I. Code R. § 8.3.2.4 (ten-point font or larger presumed legible) (Rhode Island).

[105] 74 FR at 57960.

[106] A standard incandescent bulb has a CRI of 100. *Id.*

[107] 42 U.S.C. 6295(i)(B)(ii).

[108] *See* Roundtable Tr., Horowitz at 91 ("Within the lighting industry, it's assumed if you're 80, you're giving at least pretty good color rendering."); Howley at 100.

[109] 74 FR at 57959-60. EISA directs the Commission to consider a total lifecycle cost disclosure. 42 U.S.C. 6294(a)(2)(D)(iii)(I)(bb).

[110] *See* Roundtable Tr. at 50, 58-59 and NEMA Comments.

[111] NEMA suggested that any on-label dimmer disclosure be voluntary.

[112] *See* EPA, Protect Your Family From Lead in Your Home, *available at* (*http://www.epa.gov/lead/pubs/leadpdfe.pdf*).

[113] 74 FR at 57959.

2) feature the same life or energy information (*i.e.*, claim) based on the electricity rate and usage assumptions required for the label in close proximity to, and with equal clarity and conspicuousness as, the off-label claim. Thus, in the prior example, the manufacturer would have to clearly and conspicuously disclose that the five-year life claim is based on a two-hour per day use assumption and disclose the bulb's life based on the three-hour assumption used for the on-label disclosure.

Comments: No commenter specifically objected to these proposed requirements. However, some urged going beyond a triggered disclosure to ban or restrict certain off-label package claims, including bulb life and energy-cost claims based on assumptions that differ from those used for the Lighting Facts label.

Three commenters supported barring claims not based on assumptions prescribed by the Commission. Specifically, GE joined NEMA in proposing that the final amendments bar all claims based on use and cost assumptions differing from those required for on-label disclosures. In addition, NEMA recommended prescribing, to the extent not already proposed, certain assumptions for claims related to CRI, energy cost, and watt equivalence. Similarly, the Energy Efficiency Advocates supported banning several types of claims that do not conform to prescribed assumptions or fail to report data in a prescribed manner. They further recommended requiring manufacturers to base comparative claims (*e.g.*, "saves X dollars compared to other bulbs") on comparisons to a standard incandescent bulb, rather than the least efficient type of incandescent bulbs.

The Energy Efficiency Advocates and NEMA also suggested regulating the format of off-label claims so that they do not detract from or dilute the meaning of the label disclosures. As an example, the Energy Efficiency Advocates suggested limiting the font size of power-use or watt-equivalence claims to the size of the front-panel disclosures. In addition, while not offering specific recommendations, NEMA voiced support for specific formatting requirements to prevent consumer confusion.

Discussion: Despite comments urging a ban of off-label claims that are not based on Commission-prescribed assumptions, the final amendments neither prohibit claims based on alternate assumptions nor mandate a particular format. While a lifetime claim based on an assumption of other than three-hour use per day (or a cost claim based on an electricity price other than 11 cents per kWh) could be misleading, banning such claims limits manufacturers' ability to convey useful, non-deceptive information. For example, a manufacturer may place a chart on its package with cost information based on several electricity price assumptions. Such a chart could help consumers in locations with higher electricity prices by providing the operating cost of the bulb in their region. Moreover, the Commission cannot conclude that manufacturers can make such claims non-deceptively in only one format.

Given the potential for confusion, however, the final amendments continue to require manufactures who make such off-label claims to clearly and conspicuously disclose the assumptions used to derive them (*e.g.*, two-hour per day bulb use).[114] Moreover, consistent with the NPRM, these manufacturers must repeat the claim using the label assumptions with equal clarity and conspicuousness, and in close proximity to the off-label claim. For example, manufacturers could comply by presenting consumers with a chart showing the cost of operating a bulb at several realistic electricity price points, as long as one is 11 cents per kWh (the assumption required for the label). The Commission, however, cautions manufacturers that they must have substantiation for their claims and that unrealistic assumptions could render claims misleading.

C. Product Labeling

In addition to package labeling, the NPRM proposed requiring a mercury disclosure and a lumen disclosure directly on the product.[115] These proposed disclosures are addressed below.

1. Mercury

In its NPRM, the Commission proposed requiring manufacturers to print the following information on CFL products: "Contains MERCURY. See epa.gov/bulbrecycling or 1-800-XXX-XXXX."[116] The NPRM proposed this on-product disclosure because consumers may not have packaging to refer to when a bulb burns out or breaks. Therefore, consumers may not have this important information when they most need it.

Comments: Commenters disagreed about the proposed product disclosure. GE and NEMA opposed the proposal, urging the Commission to require just the "Hg" symbol because CFL bases generally do not have room for lengthy disclosures.[117] They further asserted that on-product disclosures are unnecessary because consumers typically store extra light bulbs in their original packaging, allowing them to refer to those packages for mercury information.

In contrast, EPA, IMERC, and QSC supported the disclosure. Specifically, they asserted that a more detailed on-product disclosure than "Hg" is necessary because most consumers do not understand the "Hg" symbol. IMERC further noted that CFL bases generally have sufficient room for short disclosures. In addition, EPA recommended adding language referencing bulb disposal, proposing: "Contains Mercury. If broken or burned out, see (*www.epa.gov/cfl*)."[118]

Discussion: The final amendments require the following disclosure on all general service lamps containing mercury in at least eight-point type: "Mercury disposal: epa.gov/cfl."[119] As discussed below, this disclosure is needed to ensure that consumers are aware of fundamental safety information.

For the reasons noted above (section V.B.2.f), the on-product mercury disclosure uses the EPA website and omits a toll-free number. The Commission also has omitted the "Hg" symbol because it is concerned that consumers will not understand the symbol.

To address GE and NEMA's concerns about the length of the disclosure, the Commission has abbreviated it and reduced the font size from ten to eight-point type. FTC staff's review of several standard CFL lamp ballasts demonstrates that there is sufficient space on the product for this truncated disclosure,[120] which balances the need to clearly impart important information to consumers with the limited space available on the product.

Additionally, even if many consumers do store bulb packaging, it is still important to have an on-product disclosure. First, many other consumers presumably dispose of the bulb's

[114] Section 305.15(b)(6).

[115] For incandescent and LED bulbs, on-product disclosures are likely to appear on the bulb's outer casing. For CFLs, these disclosures are likely to appear on the bulb's base.

[116] 74 FR at 57960.

[117] GE and NEMA further noted that bulbs sold in different countries would require the proposed disclosure in multiple languages, further lengthening the disclosure.

[118] As with package labeling, EPA recommended eliminating the toll-free number due to uncertain funding and recommended use of its *www.epa.gov/cfl* web address.

[119] Section 305.15(b)(7)(ii).

[120] This conclusion is consistent with IMERC's observation about available space on CFL bases.

packaging, and thus, absent an on-product disclosure, will not have this important safety information when they most need it. Second, disclosing the information in two different places (on the label and the product) significantly increases the chance that consumers will access this information and dispose of CFLs properly. Therefore, the burden of an additional on-product disclosure is warranted.

2. Lumens

In its NPRM, the Commission proposed requiring an on-product lumen disclosure, explaining that this information would help consumers purchase appropriate replacement bulbs, as well as reinforce the importance of lumens for measuring brightness.[121]

Comments: The Energy Efficiency Advocates strongly supported this disclosure. Specifically, they explained that an on-product disclosure would inform consumers about a bulb's brightness when they remove it, thereby enabling them to seek a replacement bulb with the desired comparative brightness. On the other hand, NEMA objected, noting the difficulty and expense of marking information on a lamp. In addition, NEMA explained that available space on the product is often scarce and manufacturers cannot guarantee clarity when marking information.

Discussion: The final amendments require an on-product lumen disclosure, which must be in at least eight-point type to ensure legibility.[122] As noted by the Energy Efficiency Advocates, on-product lumen information will give consumers the information they need to purchase appropriate replacement bulbs. Indeed, given the long life of many high efficiency bulbs, consumers may not remember the brightness of a bulb, or have the original packaging, when it comes time to replace it.

Furthermore, notwithstanding NEMA's concerns, FTC staff's review of covered bulbs indicates that these bulbs have room for this short disclosure. With respect to CFLs, staff has observed that they have room on the base for this additional, small disclosure. With respect to other bulbs, there is ample room for the disclosure on the glass casing.[123]

D. Reporting Requirements

EPCA mandates that manufacturers collect and report to the FTC energy use and light output information, developed in accordance with applicable DOE testing procedures, about all bulbs covered by the Appliance Labeling Rule.[124] Because no applicable DOE test procedures existed when the FTC last amended the labeling requirements for common household bulbs in 1994, the Commission stayed these requirements at that time.[125] DOE, however, has since issued test procedures for all bulbs subject to the proposed labeling requirements, except LEDs.[126] Accordingly, the NPRM proposed lifting the stay effective in 2012 and requiring reporting for all covered bulbs, except LEDs.[127]

Comments: Earthjustice objected to delaying the effective date for lifting the stay until 2012. It asserted that manufacturers should report this information sooner to hasten the FTC's ability to verify the information manufacturers put on the new label.

In addition, the Energy Efficiency Advocates urged the Commission to apply the reporting requirements to LEDs, and to expand the reporting requirements to include bulb life and color temperature information. They contend that these additional reporting requirements are necessary to verify the information disclosed on the label.

Discussion: The final amendments lift the stay, effective the date of publication of this document.[128] Because the Appliance Labeling Rule currently specifies March 1 as the annual reporting date,[129] manufacturers' first annual report for covered bulbs will be due on March 1, 2011.[130] The Commission agrees that it should not further delay imposition of the reporting requirements because this information will help ensure that marketers have substantiation for the information they put on the label. However, the Commission declines to require reporting for LEDs, as suggested by the Energy Efficiency Advocates, because DOE has not issued a test for those bulbs.

In addition, the final amendments expand the reporting requirements to include bulb life and color appearance information for bulbs with applicable DOE testing procedures. Presently, DOE has testing procedures to measure the life of CFLs, as well as the color temperature of incandescent bulbs,[131] so the final amendments require reporting for these bulbs. The information will be useful to the FTC in its review of manufacturers' disclosures. Moreover, reporting this additional information should impose little or no additional burden on manufacturers because they will need this information in order to properly label their bulbs. The Commission will consider life and color temperature reporting for other bulbs as DOE develops additional testing procedures.

E. Testing Requirements

The NPRM proposed adding general service incandescent lamps, general service fluorescent lamps, and medium base CFLs to the list of products required to be tested pursuant to approved DOE procedures.[132] If DOE has no test for a particular disclosure, (*e.g.*, color temperature), manufacturers must possess and rely upon competent and reliable scientific tests to substantiate the disclosure.

Comments: DOE commented that the Commission should require a specific test procedure for measuring certain disclosures for LEDs. Specifically, DOE urged the Commission to require use of Illuminating Engineering Society (IES) test IES-LM-79-2008 ("LM-79"), which it identified as the industry standard for measuring the light output, efficacy (lumens per watt), and color characteristics of LED bulbs. DOE requires this test as a condition of participation in its voluntary "Lighting Facts" program for LED lamps.

Discussion: The final amendments contain the same testing requirements proposed in the NPRM.[133] They do not impose the specific test procedure for LEDs requested by DOE because the Commission has not sought comment on this issue.[134] In light of DOE's

[121] 74 FR at 57960.

[122] Section 305.15(b)(7)(i).

[123] Nonetheless, if it simply is not possible to fit the required lumen disclosure on a particular product, manufacturers can petition the Commission for an exemption.

[124] 42 U.S.C. 6296(b)(4).

[125] *See* 59 FR 25176, 25201-25202 (May 13, 1994).

[126] *See* 10 CFR 430.23(r) & (y).

[127] 74 FR at 57960. Specifically, for each model of bulb they distribute, manufacturers are required to report to the FTC the model number, starting serial number or other means of identifying the date of manufacture, as well as test results showing the wattage, light output, and, for general service fluorescent lamps, CRI of the product. Manufacturers must report this information annually on the date indicated in the Rule, except for new models, for which manufacturers must submit a report prior to the initial product distribution.

[128] Section 305.8.

[129] 16 CFR 305.8(b).

[130] For new models distributed 30 days after the date of publication, manufacturers must report before distribution. 16 CFR 305.8(c).

[131] 10 CFR 430, Subpt. B, Appendices R and W.

[132] 74 FR at 57960.

[133] Section 305.5.

[134] The Commission now seeks comment on whether this test should be required. It will weigh any comments when it considers whether to reopen the rulemaking not later than 180 days before the effective date of the new labeling requirements as mandated by EISA. 42 U.S.C. 6294(a)(2)(D)(iii)(II)(bb).

substantial expertise in this area, however, the final amendments include LM-79 as a non-required testing procedure that the Commission deems acceptable to substantiate light output and color temperature disclosures for LEDs.[135]

In addition, just as it advanced the effective date for the reporting requirements, the Commission also advances the effective date for the testing requirements for general service incandescent lamps, general service fluorescent lamps, and medium-base CFLs to coincide with the effective date of the labeling requirements. Specifically, manufacturers must base all Lighting Facts label disclosures for these bulbs on applicable DOE tests or, if none exist, other competent and reliable scientific tests.

F. Website and Paper Catalog Requirements

In its NPRM, the Commission proposed requiring websites and paper catalogs selling light bulbs to disclose the same information that appears on the Lighting Facts label in a manner consistent with section 305.20.[136] Moreover, to encourage uniform disclosures and to reduce the burden on paper catalog and online merchants, the proposed amendments permitted, but did not require, marketers to comply by posting an image of the Lighting Facts label for each covered bulb. These proposed amendments would ensure that consumers shopping online and in paper catalogs have access to the same information as consumers shopping in stores.

Comments: The Commission received no comments on this proposal.

Discussion: The final amendments maintain the requirements proposed in the NPRM with one change.[137] Consistent with the graphic labeling requirements for appliances, the final amendments permit web site and paper catalog sellers that do not reproduce the Lighting Facts label in its entirety to omit the light appearance temperature scale and make only a Kelvin temperature disclosure (*e.g.*, 2700 K). This change is designed to address difficulties some online and catalog marketers might have reproducing the scale. Nonetheless, the Commission encourages online and paper catalog marketers simply to reproduce the Lighting Facts label when possible to provide information to consumers in a clear, familiar format.

G. Consumer Education

In its NPRM, in response to EISA's mandate that the FTC work with DOE and other agencies to conduct a proactive national program of "consumer awareness, information, and education," the Commission explained that it is considering various approaches to consumer education about energy efficient lighting choices.[138] The NPRM noted that consumer education may include a detailed color temperature scale similar to that considered in NRCan's research and currently used in DOE's solid-state lighting program.[139]

Comments: NEMA, GE, CEE, and Estes supported extensive education efforts to help consumers understand high efficiency bulbs and the new label. The Energy Efficiency Advocates specifically endorsed developing watt-equivalence charts to display to consumers at the point of sale.

Discussion: The Commission will keep these comments in mind as it works with DOE and other agencies on consumer education efforts.

H. Effective Date of Labeling Requirements

In its NPRM, the Commission did not propose an effective date for the new labeling requirements. Rather, the Commission sought comment on when the new requirements should become effective.

Comments: NEMA stated that the amendments should allow manufacturers to implement labeling changes on a rolling basis over one to two years. Vranich noted that the longer the implementation period, the more manufacturers can mitigate costs by phasing in new labeling when they make package changes in the normal course of business.

Discussion: The Commission sets the effective date for the labeling requirements one year after issuance of this document. This one-year period should provide manufacturers with adequate time to redesign labels and packaging, as well as to reduce package inventory. The Commission provided manufacturers with the same one-year period when it last amended the labeling requirements in 1994, without any discernible problem.[140] The Commission encourages manufacturers to begin using the new label before the effective date, if possible.

VI. Section by Section Description of Final Amendments

Lamp Coverage (section 305.3): The new labeling requirements apply to medium screw base general service incandescent (including halogen and reflector), compact fluorescent, and LED lamps. The final amendments group these products under the term "general service lamp."

Substantiating Required Disclosures (section 305.5): The amendments require manufacturers to follow DOE test procedures if such procedures are applicable to their products to substantiate claims required by the Rule. For lamp types or information not covered by the DOE test procedure but required by the Rule, manufacturers must possess and rely upon competent and reliable scientific tests to substantiate their required representations.

Testing, Reporting, and Sampling Requirements (sections 305.5, 305.6, and 305.8): Manufacturers must submit data for their labeled lamps based on applicable DOE test procedures. The amendments also make minor conforming changes to the terms used in the sampling requirements to reflect the revised definitions for covered lamp products.

Product Labeling (section 305.15(b)): Manufacturers must make a lumen disclosure and, if applicable, a mercury disclosure on the product.

Front Package Panel (section 305.15(b) & (c)): The final amendments require two disclosures on the front package panel: brightness in lumens and energy cost in dollars per year.

Rear or Side Package Panel (section 305.15(b) &(c)): The back (or side) panel must contain detailed disclosures in the form of a Lighting Facts label similar to the Nutrition Facts label required on food packaging. The disclosures on the Lighting Facts label detail brightness, energy cost, bulb life, light appearance, watts, and, in some cases, voltage and mercury information.

Cost and Life Claims on Packages (section 305.15(c)): Manufacturers that make a cost or life-related claim on the package based on an electricity cost figure or usage rate other than that required on the Lighting Facts label must also make an equally clear and conspicuous disclosure of the same information using the electricity cost figure and usage assumption on the Lighting Facts label.

Catalog Requirements (section 305.20): Catalog sellers (including websites) must disclose, for each bulb,

[135] The Commission recommends that LED manufacturers consult with DOE for guidance in substantiating life claims for LEDs.

[136] 74 FR at 57960-1. This requirement comports with EPCA, which requires catalogs to "contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission." 42 U.S.C. 6296(a).

[137] Section 305.20.

[138] 74 FR at 57961.

[139] *See* (*http://www.lighting-facts.com*).

[140] 59 FR 25176 (May 13, 1994).

the same information required on the Lighting Facts label.

Test Records (section305.21): Manufacturers must maintain and provide upon request by the Commission, test records for correlated color temperature in addition to light output, energy use, and bulb life ratings already required by the Rule.

VII. Request for Comment

The Commission invites interested persons to submit written comments as requested in this document.[141] Please provide explanations for your answers and supporting evidence where appropriate. All comments should be filed as prescribed below, and must be received on or before September 20, 2010.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Lamp Labeling Amendments, Project No. P084206" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[142]

Because U.S. mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/lamplabels*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/lamplabels*). If this document appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that *regulations.gov* forwards to it. You may also visit the FTC website at (*http://www.FTC.gov*) to read the document and the news release describing it.

A comment filed in paper form should include the "Lamp Labeling Amendments, Project No. P084206" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*) As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.htm.*)

VIII. Paperwork Reduction Act

The final amendments contain label disclosure provisions that constitute "collection of information" requirements as defined by 5 CFR 1320.3(c), the definitional provision within Office of Management and Budget ("OMB") regulations that implement the Paperwork Reduction Act ("PRA").[143] OMB has approved the Appliance Labeling Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084-0069). The amendments make changes in the Rule's labeling requirements. Accordingly, the Commission has submitted the NPRM and a Supporting Statement to OMB for review under the PRA.[144]

Burden estimates for the amendments are based on data previously submitted by manufacturers to the FTC under the Rule's existing requirements and on the staff's general knowledge of manufacturing practices.

In response to the NPRM, two comments addressed the compliance costs of the proposed amendments. NEMA explained that the proposal "grossly underestimates" the cost of labeling changes but did not provide any specific details. Vranich provided cost estimates based on past FDA studies of food label changes, including capital cost estimates for administration, graphic design, and printing changes on a per product basis.

In response to the comments, the Commission has revised significantly its burden estimates, as detailed below. In particular, it has added estimated capital costs associated with package and product label design changes and has increased the time estimate for manufacturers to add the new disclosures to their product packaging and labeling.

Package and Product Labeling: The amendments require manufacturers to change their package and product labeling to include new disclosures. The new requirements will require a one-time adjustment for manufacturers. The Commission estimates that there are 50 manufacturers making approximately 6,000 covered products.[145] This

[141] Comments should address the issues for which comments have been requested (*i.e.*, product coverage and beam spread information (V.A.), bilingual disclosures (V.B.1), directional light disclosures and watt-equivalence standards (V.B.2.a.), power factor (V.B.2.b.), lead disclosures (V.B.2.i.), and LED test procedures (V.E.)). The Commission is not seeking general comments on the final amendments.

[142] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[143] 44 U.S.C. 3501-3521.

[144] As was the case with the NPRM, the PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions, specifically those regarding recordkeeping and reporting requirements, have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

[145] Based on a review of ENERGY STAR data for products covered under that program, the

Continued

adjustment will require an estimated 100 hours per manufacturer.[146] Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 33 hours per year. Thus, the label design change will result in cumulative burden of 1,650 hours (50 manufacturers x 33 hours). In estimating the associated labor cost, the Commission assumes that the label design change will be implemented by graphic designers at an hourly wage rate of $22.70 per hour based on Bureau of Labor Statistics information.[147] Thus, the Commission estimates labor cost for this adjustment will total $37,455 (1,650 hours x $22.70 per hour).

The Commission estimates that the one-time capital cost of changing lightbulb package and product labeling will be $6,540,000, determined as follows. Using the cost estimates suggested by Vranich, the estimate for the one-time capital cost of the package label change is $5,340,000. This estimate is based on the assumptions that manufacturers will have to change 4,000 of the total 6,000 model packages due to the new requirements[148] and that package label changes for each product will cost $1,335.[149] As for product labeling, no commenter provided specific estimates for the cost involved. Manufacturers place information on products in the normal course of business. In the absence of cost data, the Commission assumes that the one-time labeling change will cost $200 per model for an estimated total of $1,200,000 (6,000 models x $200). Annualized in the context of a 3-year PRA clearance, these non-labor costs would average $2,180,000.

Color Temperature: Although the Commission expects that many manufacturers already conduct testing for correlated color temperature in the normal course of business (*e.g.*, to meet ENERGY STAR criteria), the final amendments may require manufacturers to conduct additional testing. The Commission assumes that manufacturers will have to test about half of the basic models (or 3,000 basic models) at 0.5 hours for each model for a total of 1,500 hours.[150] In calculating the associated labor cost estimate, the Commission assumes that this work will be implemented by electrical engineers at an hourly wage rate of $39.79 per hour based on Bureau of Labor Statistics information.[151] Thus, the Commission estimates that the new label design change will result in associated labor costs of approximately $59,685 (1,500 hours x $39.79 per hour). The Commission does not expect that the final amendments will create any capital or other non-labor costs for such testing.

Accordingly, the revised estimated total hour burden of the amendments is 3,150 hours (1,650 hours for packaging and labeling + 1,500 hours for additional testing for correlated color temperature) with associated labor costs of $97,140 and annualized capital or other non-labor costs totaling $2,180,000.[152]

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with the final rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[153]

The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant. In any event, to minimize any burden, the Commission plans to provide manufacturers with ample time to implement the proposed changes. The Commission estimates that these new requirements will apply to about 50 product manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 of these entities qualify as small businesses.

The Commission does not anticipate that the amendments will have a significant economic impact on a substantial number of small entities. Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Statement of the Need for, and Objectives of, the Amendments

Section 321(b) of EISA requires the Commission to conduct a rulemaking to consider the effectiveness of the lamp labeling and to consider alternative labeling approaches. The objective of the rulemaking is to improve the effectiveness of the current lamp labeling program. EISA directs the Commission to consider whether alternative labeling approaches would help consumers better understand new high efficiency lamp products and help them choose lamps that meet their needs. In particular, the law directs the Commission to consider labeling disclosures that address consumer needs for information about lighting level, light quality, lamp lifetime, and total lifecycle cost.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the proposed amendments on small business. Sections V.A., V.B.2.f, V.C.1, V.C.2, and V.H discuss general comments related to the regulatory burden of the final amendments.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, lamp manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Lamp catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are

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Commission now estimates that there are 6,000 basic models covered by the Rule. This is an increase from the FTC's prior estimate of 2,100 basic models. *See* 74 FR at 57963.

[146] The Commission has increased its estimate of the hours required to make this change from 80 hours per manufacturer, as stated in the NPRM, to 100 hours per manufacturer. This change was made in response to comments from industry members or their representatives that the Commission's burden estimates were too low.

[147] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-12).

[148] Over the course of a year, manufacturers are likely to change approximately 1/3 of their labels during the normal course of business. The one year compliance period and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. *See, e.g.*, FDA Labeling Cost Model at 4-3. In addition, manufacturers may use stickers in lieu of discarding inventory.

[149] *See* Vranich comment.

[150] The Commission assumes conservatively that manufacturers will conduct new testing for 3,000 out of the 6,000 estimated covered products.

[151] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-4).

[152] The estimates included in the NPRM were 2,384 hours, $72,062 (labor costs), and $0 (capital costs). *See* 74 FR at 57963.

[153] *See* 5 U.S.C. 603-605.

approximately 150 entities subject to the amended requirements that qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the amended labeling requirements will involve some increased drafting costs and reporting requirements for affected entities. As discussed above, the increased reporting burden should be *de minimis*. The transition to the use of a new label design should represent a one-time cost discussed in section VIII. Such requirements should not impose a significant burden on small entities. In addition, these burdens are discussed in section VIII, and there should be no difference in that burden as applied to small businesses. Finally, as discussed in section VIII, the changes are likely to be implemented by graphic designers (for label changes) and electrical engineers (for testing requirements and data reports). There should be no additional burden on catalog sellers beyond those already imposed by the Rule.

E. Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the amendments on small entities. As discussed in section V.H, the Commission is setting a one-year compliance period to reduce the burden associated with implementing the labels and other disclosures required by the final amendments. In addition, the Commission has reduced the size of the required labels and provided an alternative label for small packages.

In addition, the Commission routinely allows manufacturers to report required data through electronic means. However, the final amendments do not allow package and product disclosures in electronic format because such disclosures would not help consumers with their purchasing decisions for bulbs, which are typically displayed in brick-and-mortar stores.

X. Final Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set forth above, the Federal Trade Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305 — RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

■ 1. The authority citation for Part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 6294.

■ 2. In § 305.3, paragraphs (l) and (m) are revised, paragraphs (n), (o), (p), (q), (r), (s), and (t) are redesignated as (r), (s), (t), (u), (v), (w), and (x) respectively, and new paragraphs (n), (o), (p), and (q) are added to read as follows:

§ 305.3 Description of covered products.

* * * * *

(l) *General service lamp* means:

(1) A lamp that is:

(i) A medium base compact fluorescent lamp;

(ii) A general service incandescent lamp;

(iii) A general service light-emitting diode (LED or OLED) lamp; or

(iv) Any other lamp that the Secretary of Energy determines is used to satisfy lighting applications traditionally served by general service incandescent lamps.

(2) Exclusions. The term *general service lamp* does not include—

(i) Any lighting application or bulb shape described in paragraphs (n)(3)(ii)(A) through (T) of this section; and

(ii) Any general service fluorescent lamp.

(m) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is—

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of "General Service Incandescent Lamp" in paragraph (n)(3)(ii) of this section; or

(2) Any lamp not described in the definition of "General Service Incandescent Lamp" in this section and that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

(n) *Incandescent lamp:*

(1) Means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and has a rated wattage that is 40 watts or higher;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types;

(3) *General service incandescent lamp* means

(i) In general, a standard incandescent, halogen, or reflector type lamp that—

(A) Is intended for general service applications;

(B) Has a medium screw base;

(C) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(D) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(ii) *Exclusions.* The term "general service incandescent lamp" does not include the following incandescent lamps:

(A) An appliance lamp as defined at 42 U.S.C. 6291(30);

(B) A black light lamp;

(C) A bug lamp;

(D) A colored lamp as defined at 42 U.S.C. 6291(30);

(E) An infrared lamp;

(F) A left-hand thread lamp;

(G) A marine lamp;

(H) A marine signal service lamp;

(I) A mine service lamp;

(J) A plant light lamp;

(K) A rough service lamp as defined at 42 U.S.C. 6291(30);

(L) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);

(M) A sign service lamp;

(N) A silver bowl lamp;

(O) A showcase lamp;

(P) A traffic signal lamp;

(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);

(R) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) with a diameter of 5 inches or more;

(S) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; or

(T) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less.

(4) *Incandescent reflector lamp* means a lamp described in paragraph (n)(1)(ii) of this section; and

(5) *Tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(o) *Light-emitting diode (LED)* means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device. The output of a light-emitting diode may be in—

(1) The infrared region;

(2) The visible region; or

(3) The ultraviolet region.

(p) *Organic light-emitting diode (OLED)* means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

(q) *General service light-emitting diode (LED or OLED)* lamp means any light-emitting diode (LED or OLED) lamp that:

(1) Is a consumer product;

(2) Is intended for general service applications;

(3) Has a medium screw base;

(4) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(5) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

* * * * *

■ 3. In § 305.5, paragraphs (a)(12), (13), and (14) are added and paragraph (b) is revised to read as follows:

Testing

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) * * *

(12) General Service Incandescent Lamps – § 430.23(r).

(13) General Service Fluorescent Lamps – § 430.23(r).

(14) Medium Base Compact Fluorescent Lamps – § 430.23(y).

(b) Unless otherwise provided in paragraph (a) of this section or § 305.8, manufacturers and private labelers of any covered product that is a general service fluorescent lamp, general service lamp, or metal halide lamp fixture, must, for any representation required by this Part including but not limited to of the design voltage, wattage, energy cost, light output, life, correlated color temperature, or color rendering index of such lamp or for any representation made by the encircled "E" that such a lamp is in compliance with an applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For representations of the light output and life ratings of any covered product that is a general service lamp, unless otherwise provided by paragraph (a), the Commission will accept as a reasonable basis scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent	IES LM[9]
Compact Fluorescent	IES LM[66]
General Service Incandescent (Other than Reflector Lamps)	IES LM[45]
General Service Incandescent (Reflector Lamps)	IES LM[20]
General Service Light-emitting Diode (LED or OLED) lamps	IES LM[79]
For measuring laboratory life (in hours):	
General Service Fluorescent	IES LM[40]
Compact Fluorescent	IES LM[65]
General Service Incandescent (Other than Reflector Lamps)	IES LM[49]
General Service Incandescent (Reflector Lamps)	IES LM[49]

* * * * *

■ 4. Section 305.6 is revised to read as follows:

§ 305.6 Sampling.

(a) For any covered product (except general service fluorescent lamps or general service lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.24 of 10 CFR part 430, subpart B.

(b) For any covered product that is a general service lamp, any representation required by § 305.15 and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled "E" that such lamp is in compliance with an applicable standard established by section 325 of the Act, shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as such a sampling procedure.

■ 5. Section 305.8 is amended as follows:

■

■ a. In paragraph (a)(1), remove the phrase "medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps" and add in its place "and general service lamps".

■ b. Revise paragraph (a)(3)(v) and add paragraphs (a)(3)(vi) through (viii) to read as follows:

■ c. Revise paragraph (b)(1) by removing the term "[Stayed]" wherever it appears, and by replacing the phrase "Incandescent Lamps, incl. Reflector Lamps" with the phrase "General Service Incandescent Lamps."

§ 305.8 Submission of data.

(a) * * *

(3) * * *

(v) For all covered lamps, the test results based on 10 CFR § 430.23 for the lamp's wattage and light output ratings.

(vi) For all covered general service fluorescent lamps, the test results based on 10 CFR § 430.23 for the lamp's color rendering index and correlated color temperature.

(vii) For all covered incandescent lamps, the test results based on 10 CFR § 430.23 for the lamp's correlated color temperature.

(viii) For all covered compact fluorescent lamps, the test results based on 10 CFR § 430.23 for the lamp's life.

* * * * *

■ 6. Section 305.15 is amended as follows:

■

■ a. Revise paragraph (b).

■ b. Paragraph (c) is redesignated as paragraph (f).
■ c. New paragraphs (c), (d), and (e) are added to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(b) *General service lamps* – Except as provided in paragraph (c) of this section, any covered product that is a general service lamp shall be labeled as follows:

(1) *Principal display panel content:* The principal display panel of the product package shall be labeled clearly and conspicuously with the following information:

(i) The light output of each lamp included in the package, expressed as "Brightness" in average initial lumens rounded to the nearest five; and

(ii) The estimated annual energy cost of each lamp included in the package, expressed as "Estimated Energy Cost" in dollars and based on usage of 3 hours per day and 11 cents ($0.11) per kWh.

(2) *Principal display panel format:* The light output (brightness) and energy cost shall appear in that order and with equal clarity and conspicuousness on the principal display panel of the product package. The format, terms, specifications, and minimum sizes shall follow the specifications and minimum sizes displayed in Prototype Label 5 in Appendix L.

(3) *Lighting Facts label content:* The side or rear display panel of the product package shall be labeled clearly and conspicuously with a Lighting Facts label that contains the following information in the following order:

(i) The light output of each lamp included in the package, expressed as "Brightness" in average initial lumens rounded to the nearest five;

(ii) The estimated annual energy cost of each lamp included in the package based on the average initial wattage, a usage rate of 3 hours per day and 11 cents ($0.11) per kWh and explanatory text as illustrated in Prototype Label 6 in Appendix L;

(iii) The life, as defined in § 305.2(w), of each lamp included in the package, expressed in years rounded to the nearest tenth (based on 3 hours operation per day);

(iv) The correlated color temperature of each lamp included in the package, as measured in degrees Kelvin and expressed as "Light Appearance" and by a number and a marker in the form of a scale as illustrated in Prototype Label 6 to Appendix L placed proportionately on the scale where the left end equals 2,600 K and the right end equals 6,600 K;

(v) The wattage, as defined in § 305.2(hh), for each lamp included in the package, expressed as energy used in average initial wattage;

(vi) The ENERGY STAR logo as illustrated in Prototype Label 6 to Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(vii) The design voltage of each lamp included in the package, if other than 120 volts;

(viii) For any general service lamp containing mercury, the following statement:

"Contains Mercury For more on clean up and safe disposal, visit epa.gov/cfl."

The manufacturer may also print an "Hg[Encircled]" symbol on the label after the term "Contains Mercury"; and

(ix) No marks or information other than that specified in this part shall appear on the Lighting Facts label.

(4) *Standard Lighting Facts label format:* Except as provided in paragraph (b)(5) of this section, information specified in paragraph (b)(3) of this section shall be presented on covered lamp packages in the format, terms, explanatory text, specifications, and minimum sizes as shown in Prototype Labels 6 in Appendix L and consistent in format and orientation with Sample Labels 10, 11, or 12 in Appendix L. The text and lines shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(i) The Lighting Facts information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the Lighting Facts label shall utilize:

(A) Arial or an equivalent type style;

(B) Upper and lower case letters;

(C) Leading as indicated in Prototype Label 6 in Appendix L;

(D) Letters that never touch;

(E) The box and hairlines separating information as illustrated in Prototype Labels 6 in Appendix L; and

(F) The minimum font sizes and line thicknesses as illustrated in Prototype Label 6 in Appendix L.

(5) *Lighting Facts format for small packages.* If the total surface area of the product package available for labeling is less than 24 square inches and the package shape or size cannot accommodate the standard label required by paragraph (b)(4) of this section, manufacturers may provide the information specified in paragraph (b)(3) of this section using a smaller, linear label following the format, terms, explanatory text, specifications, and minimum sizes illustrated in Prototype Label 7 in Appendix L.

(6) *Bilingual labels.* The information required by paragraphs (b)(1) through (5) of this section may be presented in a second language either by using separate labels for each language or in a bilingual label with the English text in the format required by this section immediately followed by the text in the second language. Sample Label 13 in Appendix L provides an example of a bilingual Lighting Facts label. All required information must be included in both languages. Numeric characters that are identical in both languages need not be repeated.

(7) *Product Labeling.* Any general service lamp shall be labeled legibly on the product with the following information:

(i) The lamp's average initial lumens, expressed as a number rounded to the nearest five, adjacent to the word "lumens," both provided in minimum 8 point font; and

(ii) For general service lamps containing mercury, the following statement: "Mercury disposal: epa.gov/cfl" in minimum 8 point font.

(c)(1) Any covered incandescent lamp that is subject to and does not comply with the January 1, 2012 efficiency standards specified in 42 U.S.C. 6295 shall be labeled clearly and conspicuously on the principal display panel of product package with the following information in lieu of the labeling requirements specified in paragraph (b) of this section:

(i) The number of lamps included in the package, if more than one;

(ii) The design voltage of each lamp included in the package, if other than 120 volts;

(iii) The light output of each lamp included in the package, expressed in average initial lumens;

(iv) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage; and

(v) The life of each lamp included in the package, expressed in hours.

(2) The light output, energy usage and life ratings of any product covered by paragraph (c)(1) of this section shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The

light output, energy usage and life ratings shall be disclosed in terms of "lumens," "watts," and "hours" respectively, with the lumens, watts, and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts," and "hours" each appearing in the same type style and size. The words "light output," "energy used," and "life" shall precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts," and "hours," except that the letters of the words "lumens," "watts," and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used," and "life," respectively.

(d)(1) The required disclosures of any covered product that is a general service lamp shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output, energy cost, and life ratings shall in each instance be:

(i) At 120 volts and followed by the phrase "at 120 volts." In such case, the labels for such lamps also may disclose the lamp's wattage, light output, energy cost, and life at the design voltage (*e.g.*, "Light Output 1710 Lumens at 125 volts"); or

(ii) At the design voltage and followed by the phrase "at (125 volts/130 volts)" if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, energy cost, wattage or lifeclearly and conspicuously identify the lamp as "(125 volt/130 volt)," and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(2) For any covered product that is an incandescent reflector lamp, the required disclosures of light output shall be given for the lamp's total forward lumens.

(3) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(4) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output andthe lamp's life provided on the basis of the filament that fails first. The multiple numbers shall be separated by a "/" (*e.g.*, 800/1600/2500 lumens).

(5) A manufacturer or private labeler who distributes general service fluorescent lamps or general service lamps without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the package disclosure requirements of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(6) Any manufacturer or private labeler who makes any representation, other than those required by this section, on a package of any covered product that is a general service fluorescent lamp or general service lamp regarding the cost of operation or life of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use. If those assumptions differ from those required for the cost and life information on the Lighting Facts label (11 cents per kWh and 3 hours per day), the manufacturer or private labeler must also disclose, with equal clarity and conspicuousness and in close proximity to, the same representation based on the assumptions for cost and life required on the Lighting Facts label.

(e)(1) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled "E"] means this bulb meets Federal minimum efficiency standards.

(i) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back,Top, Side] panel for details.

(ii) For purposes of this paragraph, the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

(2) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled "E" and with the statement described in paragraph (e)(1) of this section, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled "E."

(3) Any cartons in which any covered products that are general service fluorescent lamps and general service lamps are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

* * * * *

■ 7. In § 305.19, remove the phrase "medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps" and add in its place "general service lamps" wherever it appears.

■ 8. Section 305.20 is amended as follows:

■ a. In paragraph (a)(1), remove the phrase "medium base compact fluorescent lamps, general service incandescent lamps including incandescent reflector lamps" and add in its place "general service lamps" wherever it appears;

■ b. Revise paragraph (c)(1) to read as follows:

§ 305.20 Paper catalogs and websites.

* * * * *

(c)(1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp or general service lamp shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a general service lamp, all the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp's package labeling either in the form of the manufacturer's Lighting Facts label prepared pursuant to § 305.15 or otherwise in a clear and conspicuous

manner. For the "Light Appearance" disclosure required by § 305.15(b)(3)(iv), the catalog need only disclose the lamp's correlated color temperature in Kelvin (*e.g.*, 2700 K); and

(ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.15 of this part to be disclosed on the lamp's package labeling according to the following format:

(A) The encircled "E" shall appear with each lamp entry; and

(B) The accompanying statement described in § 305.15(d)(1) shall appear at least once on the page.

* * *

■ 9. In § 305.21, revise paragraph (b) to read as follows:

§ 305.21 Test data records.

* * * * *

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the water use or energy consumption rate, the energy efficiency rating, the estimated annual cost of using each basic model, or the light output, energy usage, correlated color temperature, and life ratings and, for fluorescent lamps, the color rendering index, for each basic model or lamp type were derived.

■ 10. Amend Appendix L as follows:

■ a. Add Prototype Labels 5, 6, and 7 after Prototype Label 4,

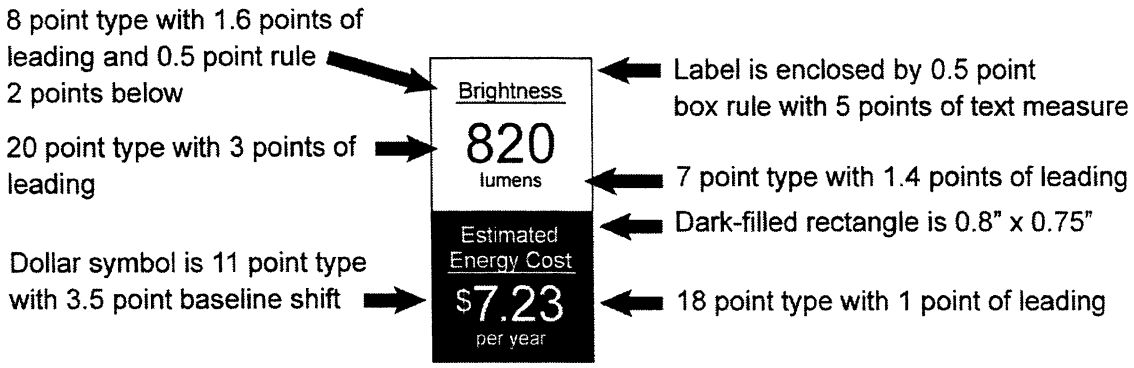
■ b. Remove all graphics labeled Lamp Packaging Disclosures; and

■ c. Add Sample Labels 10, 11, 12, and 13 after Sample Label 9 as follows:

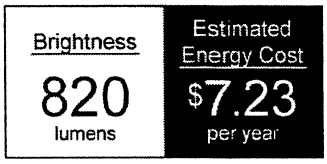
Appendix L to Part 305 – Sample Labels

* * * * *

* Typeface is Arial or equivalent type style. Type is black or one color printed on a white or other neutral contrasting background.

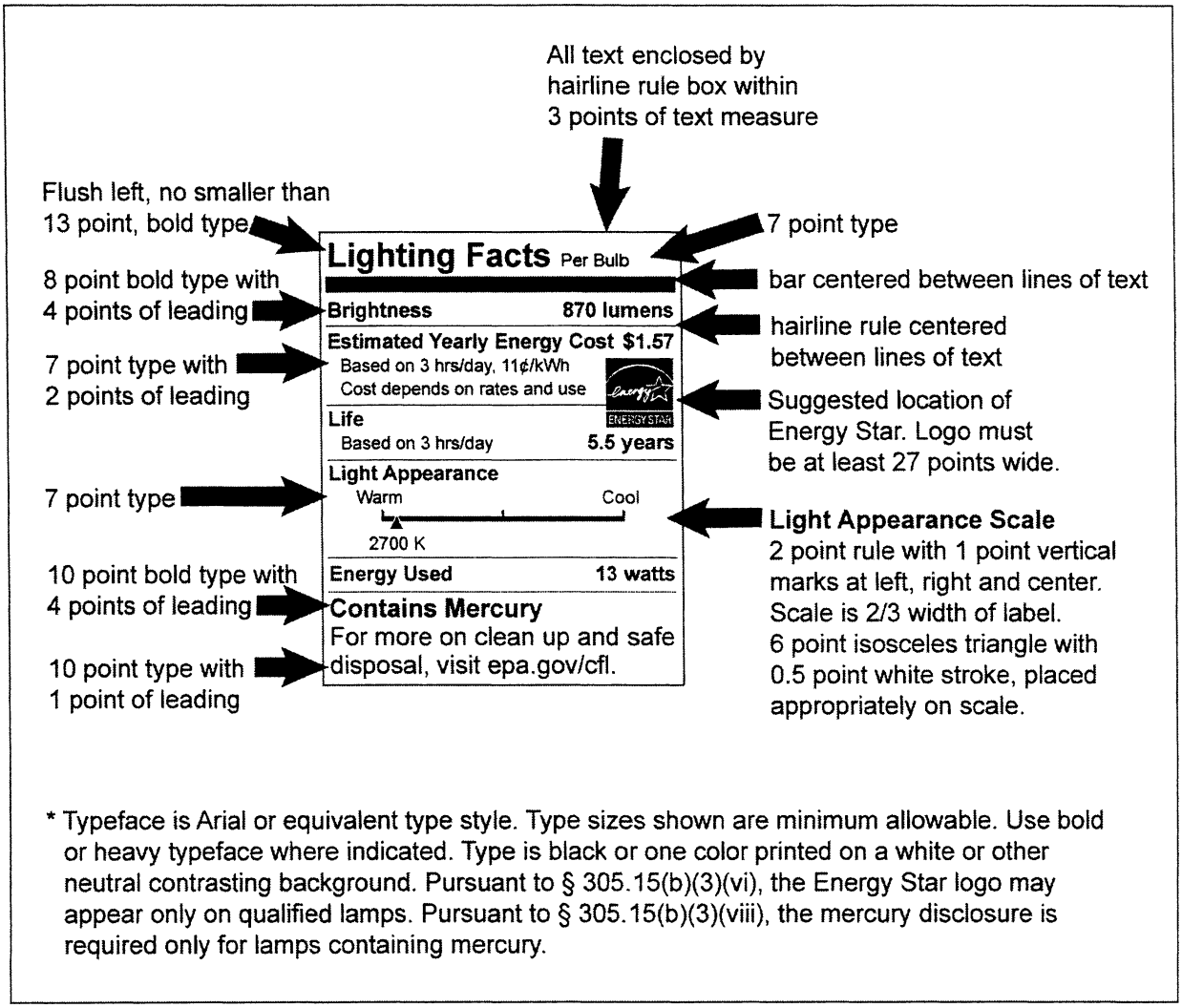


* Minimum size for vertical label is 0.8" x 1.5". Scale label and all text proportionally.



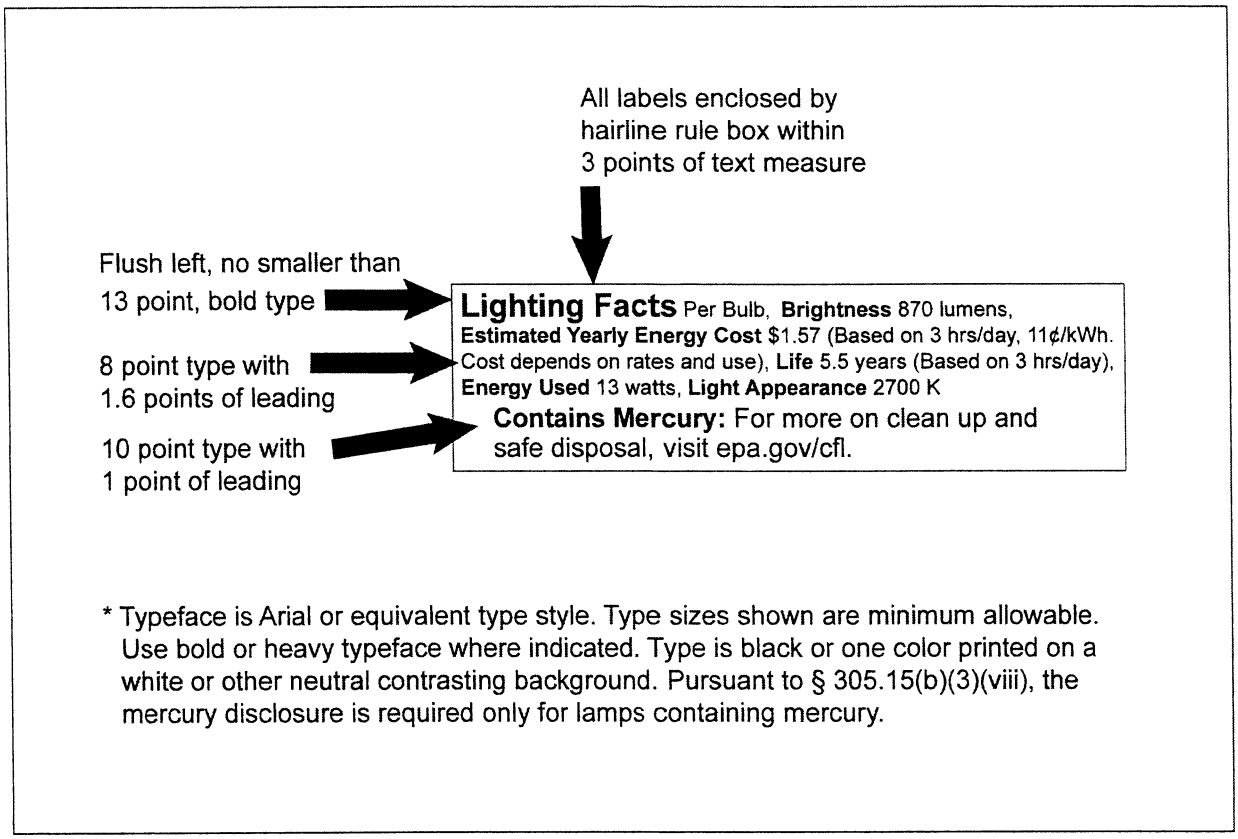
* Minimum size for vertical label is 1.6" x 0.75". Scale label and all text proportionally.

PROTOTYPE LABEL 5
FRONT PACKAGE DISCLOSURE FOR GENERAL SERVICE LAMPS



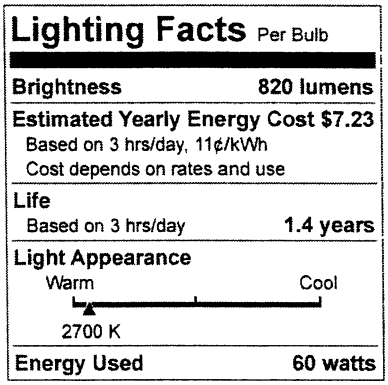
* Typeface is Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black or one color printed on a white or other neutral contrasting background. Pursuant to § 305.15(b)(3)(vi), the Energy Star logo may appear only on qualified lamps. Pursuant to § 305.15(b)(3)(viii), the mercury disclosure is required only for lamps containing mercury.

PROTOTYPE LABEL 6
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMPS (STANDARD FORMAT)

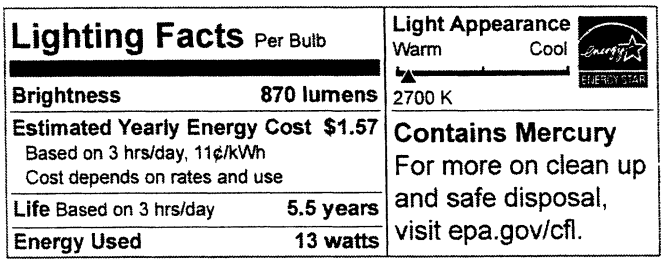


PROTOTYPE LABEL 7
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMPS CONTAINING MERCURY (LINEAR FORMAT)

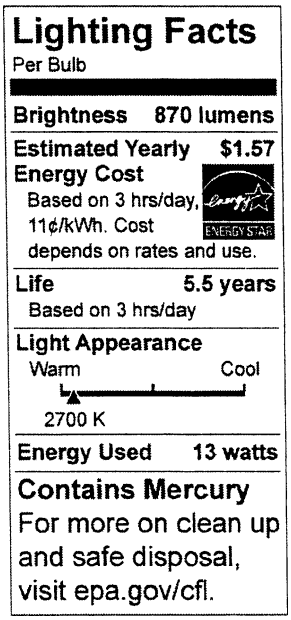
* * * * *



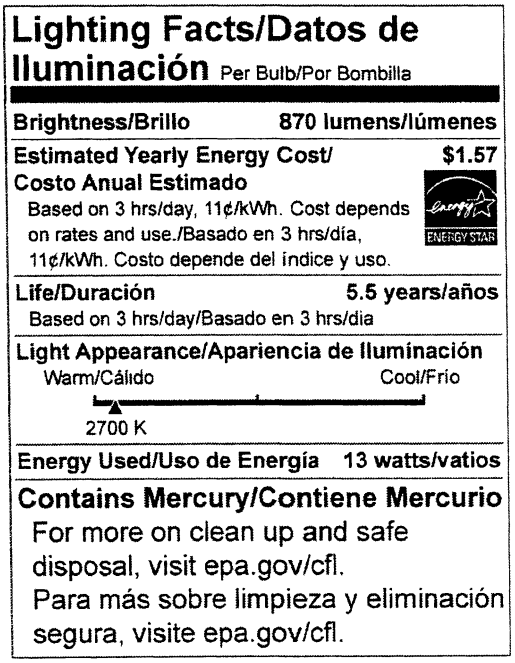
SAMPLE LABEL 10
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP NOT CONTAINING MERCURY



SAMPLE LABEL 11
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (WIDE ORIENTATION)



SAMPLE LABEL 12
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (TALL ORIENTATION)



SAMPLE LABEL 13
LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY (BILINGUAL EXAMPLE)

* * * * *

By direction of the Commission.

Donald S. Clark
Secretary

[FR Doc. 2010–16895 Filed 7–19–10: 8:45 am]
BILLING CODE 6750–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2008–F–0151] (formerly Docket No. 2007F–0478)

Food Additives Permitted in Feed and Drinking Water of Animals; Ammonium Formate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of ammonium formate as an acidifying agent in swine feed. This action is in response to a food additive petition filed by Kemira Oyj of Finland.

DATES: This rule is effective July 19, 2010. Submit either electronic or written objections and requests for a hearing by August 18, 2010. See section V of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and a request for a hearing, identified by Docket No. FDA–2008–F–0151, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed information on submitting objections, see the "Objections" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, e-mail: *isabel.pocurull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of January 11, 2008 (73 FR 2055), FDA announced that a food additive petition (animal use) (FAP 2258) had been filed by Kemira Oyj, Porkkalantatu 3, PO Box 330, 001000 Helsinki, Finland. The petition proposed to amend the food additive regulations to provide for the safe use of partially ammoniated formic acid as an acidifying agent at levels not to exceed 1.2 percent in swine feed. Subsequently, it was determined that the food additive is more accurately described as ammonium formate. The notice of filing provided for a 60-day comment period on the petitioner's environmental assessment. No comments have been received.

II. Conclusion

FDA concludes that the data establish the safety and utility of ammonium formate for use as proposed with modification and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

V. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. It is no longer necessary to send three copies of all documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Add § 573.170 to read as follows:

§ 573.170 Ammonium formate.

The food additive, partially ammonium formate, may be safely used in the manufacture of complete swine feeds in accordance with the following prescribed conditions:

(a) The additive is manufactured by the reaction of 99.5 percent ammonia gas and 99 percent formic acid in a continuous loop reactor to produce a solution made up of 37 percent ammonium salt of formic acid and 62 percent formic acid.

(b) The additive is used or intended for use as a feed acidifying agent, to lower the pH, in complete swine feeds at levels not to exceed 1.2 percent of the complete feed.

(c) To assure safe use of the additive, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act (the act), the label and labeling shall contain:

(1) The name of the additive.

(2) Adequate directions for use including a statement that ammonium formate must be uniformly applied and thoroughly mixed into complete swine feeds and that the complete swine feeds so treated shall be labeled as containing ammonium formate.

(d) To assure safe use of the additive, in addition to the other information required by the act and paragraph (c) of this section, the label and labeling shall contain:

(1) Appropriate warnings and safety precautions concerning ammonium formate (37 percent ammonium salt of formic acid and 62 percent formic acid).

(2) Statements identifying ammonium formate in formic acid (37 percent ammonium salt of formic acid and 62 percent formic acid) as a corrosive and possible severe irritant.

(3) Information about emergency aid in case of accidental exposure as follows:

(i) Statements reflecting requirements of applicable sections of the Superfund Amendments and Reauthorization Act (SARA), and the Occupational Safety and Health Administration's (OSHA) human safety guidance regulations.

(ii) Contact address and telephone number for reporting adverse reactions or to request a copy of the Material Safety Data Sheet (MSDS).

Dated: July 14, 2010.

Tracey H. Forfa,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2010–17565 Filed 7–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9493]

RIN 1545–BJ60

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AB44

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OCIIO–9992–IFC]

45 CFR Part 147

RIN 0938–AQ07

Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of Consumer Information and Insurance Oversight, Department of Health and Human Services.

ACTION: Interim final rules with request for comments.

SUMMARY: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding preventive health services.

DATES: *Effective date.* These interim final regulations are effective on September 17, 2010.

Comment date. Comments are due on or before September 17, 2010.

Applicability dates. These interim final regulations generally apply to group health plans and group health insurance issuers for plan years beginning on or after September 23, 2010. These interim final regulations generally apply to individual health insurance issuers for policy years beginning on or after September 23, 2010.

ADDRESSES: Written comments may be submitted to any of the addresses specified below. Any comment that is submitted to any Department will be shared with the other Departments. Please do not submit duplicates.

All comments will be made available to the public. *WARNING:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB44, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: E-OHPSCA2713.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* RIN 1210–AB44.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Department of Health and Human Services. In commenting, please refer to file code OCIIO–9992–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–9992–IFC, P.O. Box 8016, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the

following address ONLY: Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Attention: OCIIO–9992–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OCIIO drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

Inspection of Public Comments. All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Internal Revenue Service. Comments to the IRS, identified by REG–120391–10, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* CC:PA:LPD:PR (REG–120391–10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–120391–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224.

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW., Washington, DC from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Jim Mayhew, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, at (410) 786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*http://www.cms.hhs.gov/HealthInsReformforConsume/01_Overview.as*) and information on health reform can be found at *http://www.healthreform.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act (the Affordable Care Act), Public Law 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The term "group health plan" includes both insured and self-insured group health plans.[1] The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes.

Subtitles A and C of title I of the Affordable Care Act amend the requirements of title XXVII of the PHS Act (changes to which are incorporated into ERISA section 715). The preemption provisions of ERISA section 731 and PHS Act section 2724[2] (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements of part 7 of ERISA and title XXVII of the PHS Act, as amended by the Affordable Care Act, are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group or individual health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of the Affordable Care Act. Accordingly, State laws that impose on health insurance issuers requirements that are stricter than those imposed by the Affordable Care Act will not be superseded by the Affordable Care Act.

[1] The term "group health plan" is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term "health plan," as used in other provisions of title I of the Affordable Care Act. The term "health plan" does not include self-insured group health plans.

[2] Code section 9815 incorporates the preemption provisions of PHS Act section 2724. Prior to the Affordable Care Act, there were no express preemption provisions in chapter 100 of the Code.

The Departments of Health and Human Services, Labor, and the Treasury (the Departments) are issuing regulations in several phases implementing the revised PHS Act sections 2701 through 2719A and related provisions of the Affordable Care Act. The first phase in this series was the publication of a Request for Information relating to the medical loss ratio provisions of PHS Act section 2718, published in the **Federal Register** on April 14, 2010 (75 FR 19297). The second phase was interim final regulations implementing PHS Act section 2714 (requiring dependent coverage of children to age 26), published in the **Federal Register** on May 13, 2010 (75 FR 27122). The third phase was interim final regulations implementing section 1251 of the Affordable Care Act (relating to status as a grandfathered health plan), published in the **Federal Register** on June 17, 2010 (75 FR 34538). The fourth phase was interim final regulations implementing PHS Act sections 2704 (prohibiting preexisting condition exclusions), 2711 (regarding lifetime and annual dollar limits on benefits), 2712 (regarding restrictions on rescissions), and 2719A (regarding patient protections), published in the **Federal Register** on June 28, 2010 (75 FR 37188). These interim final regulations are being published to implement PHS Act section 2713 (relating to coverage for preventive services). PHS Act section 2713 is generally effective for plan years (in the individual market, policy years) beginning on or after September 23, 2010, which is six months after the March 23, 2010 date of enactment of the Affordable Care Act. The implementation of other provisions of PHS Act sections 2701 through 2719A will be addressed in future regulations.

II. Overview of the Regulations: PHS Act Section 2713, Coverage of Preventive Health Services (26 CFR 54.9815–2713T, 29 CFR 2590.715–2713, 45 CFR 147.130)

Section 2713 of the PHS Act, as added by the Affordable Care Act, and these interim final regulations require that a group health plan and a health insurance issuer offering group or individual health insurance coverage provide benefits for and prohibit the imposition of cost-sharing requirements with respect to:

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force) with respect to the individual involved.[3]
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (Advisory Committee) with respect to the individual involved. A recommendation of the Advisory Committee is considered to be "in effect" after it has been adopted by the Director of the Centers for Disease Control and Prevention. A recommendation is considered to be for routine use if it appears on the Immunization Schedules of the Centers for Disease Control and Prevention.
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force). The Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011.

The complete list of recommendations and guidelines that are required to be covered under these interim final regulations can be found at *http://www.HealthCare.gov/center/regulations/prevention.html.* Together, the items and services described in these recommendations and guidelines are referred to in this preamble as "recommended preventive services."

These interim final regulations clarify the cost-sharing requirements when a recommended preventive service is provided during an office visit. First, if a recommended preventive service is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit. Second, if a recommended preventive service is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit. Finally, if a recommended preventive service is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of such an item or service, then a plan or issuer may impose cost-sharing requirements with respect to the office visit. The reference to tracking individual encounter data was included to provide guidance with respect to plans and issuers that use capitation or similar payment arrangements that do not bill individually for items and services.

Examples in these interim final regulations illustrate these provisions. In one example, an individual receives a cholesterol screening test, a recommended preventive service, during a routine office visit. The plan or issuer may impose cost-sharing requirements for the office visit because the recommended preventive service is billed as a separate charge. A second example illustrates that treatment resulting from a preventive screening can be subject to cost-sharing requirements if the treatment is not itself a recommended preventive service. In another example, an individual receives a recommended preventive service that is not billed as a separate charge. In this example, the primary purpose for the office visit is recurring abdominal pain and not the delivery of a recommended preventive service; therefore the plan or issuer may impose cost-sharing requirements for the office visit. In the final example, an individual receives a recommended preventive service that is not billed as a separate charge, and the delivery of that service is the primary purpose of the office visit. Therefore, the plan or issuer may not impose cost-sharing requirements for the office visit.

With respect to a plan or health insurance coverage that has a network of providers, these interim final regulations make clear that a plan or issuer is not required to provide coverage for recommended preventive services delivered by an out-of-network provider. Such a plan or issuer may also impose cost-sharing requirements for recommended preventive services delivered by an out-of-network provider.

These interim final regulations provide that if a recommendation or

[3] Under PHS Act section 2713(a)(5), the Task Force recommendations regarding breast cancer screening, mammography, and prevention issued in or around November of 2009 are not to be considered current recommendations on this subject for purposes of any law. Thus, the recommendations regarding breast cancer screening, mammography, and prevention issued by the Task Force prior to those issued in or around November of 2009 (*i.e.,* those issued in 2002) will be considered current until new recommendations in this area are issued by the Task Force or appear in comprehensive guidelines supported by the Health Resources and Services Administration concerning preventive care and screenings for women.

guideline for a recommended preventive service does not specify the frequency, method, treatment, or setting for the provision of that service, the plan or issuer can use reasonable medical management techniques to determine any coverage limitations. The use of reasonable medical management techniques allows plans and issuers to adapt these recommendations and guidelines to coverage of specific items and services where cost sharing must be waived. Thus, under these interim final regulations, a plan or issuer may rely on established techniques and the relevant evidence base to determine the frequency, method, treatment, or setting for which a recommended preventive service will be available without cost-sharing requirements to the extent not specified in a recommendation or guideline.

The statute and these interim final regulations clarify that a plan or issuer continues to have the option to cover preventive services in addition to those required to be covered by PHS Act section 2713. For such additional preventive services, a plan or issuer may impose cost-sharing requirements at its discretion. Moreover, a plan or issuer may impose cost-sharing requirements for a treatment that is not a recommended preventive service, even if the treatment results from a recommended preventive service.

The statute requires the Departments to establish an interval of not less than one year between when recommendations or guidelines under PHS Act section 2713(a)[4] are issued, and the plan year (in the individual market, policy year) for which coverage of the services addressed in such recommendations or guidelines must be in effect. These interim final regulations provide that such coverage must be provided for plan years (in the individual market, policy years) beginning on or after the later of September 23, 2010, or one year after the date the recommendation or guideline is issued. Thus, recommendations and guidelines issued prior to September 23, 2009 must be provided for plan years (in the individual market, policy years) beginning on or after September 23, 2010. For the purpose of these interim final regulations, a recommendation or guideline of the Task Force is considered to be issued on the last day of the month on which the Task Force publishes or otherwise releases the recommendation; a recommendation or guideline of the Advisory Committee is considered to be issued on the date on which it is adopted by the Director of the Centers for Disease Control and Prevention; and a recommendation or guideline in the comprehensive guidelines supported by HRSA is considered to be issued on the date on which it is accepted by the Administrator of HRSA or, if applicable, adopted by the Secretary of HHS. For recommendations and guidelines adopted after September 23, 2009, information at *http://www.HealthCare.gov/center/regulations/prevention.html* will be updated on an ongoing basis and will include the date on which the recommendation or guideline was accepted or adopted.

Finally, these interim final regulations make clear that a plan or issuer is not required to provide coverage or waive cost-sharing requirements for any item or service that has ceased to be a recommended preventive service.[5] Other requirements of Federal or State law may apply in connection with ceasing to provide coverage or changing cost-sharing requirements for any such item or service. For example, PHS Act section 2715(d)(4) requires a plan or issuer to give 60 days advance notice to an enrollee before any material modification will become effective.

Recommendations or guidelines in effect as of July 13, 2010 are described in section V later in this preamble. Any change to a recommendation or guideline that has—at any point since September 23, 2009—been included in the recommended preventive services will be noted at *http://www.HealthCare.gov/center/regulations/prevention.html.* As described above, new recommendations and guidelines will also be noted at this site and plans and issuers need not make changes to coverage and cost-sharing requirements based on a new recommendation or guideline until the first plan year (in the individual market, policy year) beginning on or after the date that is one year after the new recommendation or guideline went into effect. Therefore, by visiting this site once per year, plans or issuers will have straightforward access to all the information necessary to determine any additional items or services that must be covered without cost-sharing requirements, or to determine any items or services that are no longer required to be covered.

The Affordable Care Act gives authority to the Departments to develop guidelines for group health plans and health insurance issuers offering group or individual health insurance coverage to utilize value-based insurance designs as part of their offering of preventive health services. Value-based insurance designs include the provision of information and incentives for consumers that promote access to and use of higher value providers, treatments, and services. The Departments recognize the important role that value-based insurance design can play in promoting the use of appropriate preventive services. These interim final regulations, for example, permit plans and issuers to implement designs that seek to foster better quality and efficiency by allowing cost-sharing for recommended preventive services delivered on an out-of-network basis while eliminating cost-sharing for recommended preventive health services delivered on an in-network basis. The Departments are developing additional guidelines regarding the utilization of value-based insurance designs by group health plans and health insurance issuers with respect to preventive benefits. The Departments are seeking comments related to the development of such guidelines for value-based insurance designs that promote consumer choice of providers or services that offer the best value and quality, while ensuring access to critical, evidence-based preventive services.

The requirements to cover recommended preventive services without any cost-sharing requirements do not apply to grandfathered health plans. *See* 26 CFR 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140 (75 FR 34538, June 17, 2010).

III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS

[4] Section 2713(b)(1) refers to an interval between "the date on which a recommendation described in subsection (a)(1) or (a)(2) or a guideline under subsection (a)(3) is issued and the plan year with respect to which the requirement described in subsection (a) is effective with respect to the service described in such recommendation or guideline." While the first part of this statement does not mention guidelines under subsection (a)(4), it would make no sense to treat the services covered under (a)(4) any differently than those in (a)(1), (a)(2), and (a)(3). First, the same sentence refers to "the requirement described in subsection (a)," which would include a requirement under (a)(4). Secondly, the guidelines under (a)(4) are from the same source as those under (a)(3), except with respect to women rather than infants, children and adolescents; and other preventive services involving women are addressed in (a)(1), so there is no plausible policy rationale for treating them differently. Third, without this clarification, it would be unclear when such services would have to be covered. These interim final regulations accordingly apply the intervals established therein to services under section 2713(a)(4).

[5] For example, if a recommendation of the United States Preventive Services Task Force is downgraded from a rating of A or B to a rating of C or D, or if a recommendation or guideline no longer includes a particular item or service.

Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The provisions of the APA that ordinarily require a notice of proposed rulemaking do not apply here because of the specific authority granted by section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act. However, even if the APA were applicable, the Secretaries have determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process was completed. As noted above, the preventive health service provisions of the Affordable Care Act are applicable for plan years (in the individual market, policy years) beginning on or after September 23, 2010, six months after date of enactment. Had the Departments published a notice of proposed rulemaking, provided for a 60-day comment period, and only then prepared final regulations, which would be subject to a 60-day delay in effective date, it is unlikely that it would have been possible to have final regulations in effect before late September, when these requirements could be in effect for some plans or policies. Moreover, the requirements in these interim final regulations require significant lead time in order to implement. These interim final regulations require plans and issuers to provide coverage for preventive services listed in certain recommendations and guidelines without imposing any cost-sharing requirements. Preparations presumably would have to be made to identify these preventive services. With respect to the changes that would be required to be made under these interim final regulations, group health plans and health insurance issuers subject to these provisions have to be able to take these changes into account in establishing their premiums, and in making other changes to the designs of plan or policy benefits, and these premiums and plan or policy changes would have to receive necessary approvals in advance of the plan or policy year in question.

Accordingly, in order to allow plans and health insurance coverage to be designed and implemented on a timely basis, regulations must be published and available to the public well in advance of the effective date of the requirements of the Affordable Care Act. It is not possible to have a full notice and comment process and to publish final regulations in the brief time between enactment of the Affordable Care Act and the date regulations are needed.

The Secretaries further find that issuance of proposed regulations would not be sufficient because the provisions of the Affordable Care Act protect significant rights of plan participants and beneficiaries and individuals covered by individual health insurance policies and it is essential that participants, beneficiaries, insureds, plan sponsors, and issuers have certainty about their rights and responsibilities. Proposed regulations are not binding and cannot provide the necessary certainty. By contrast, the interim final regulations provide the public with an opportunity for comment, but without delaying the effective date of the regulations.

For the foregoing reasons, the Departments have determined that it is impracticable and contrary to the public interest to engage in full notice and comment rulemaking before putting these interim final regulations into effect, and that it is in the public interest to promulgate interim final regulations.

IV. Economic Impact

Under Executive Order 12866 (58 FR 51735), a "significant" regulatory action is subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this regulation is economically significant within the meaning of section 3(f)(1) of the Executive Order, because it is likely to have an annual effect on the economy of $100 million in any one year. Accordingly, OMB has reviewed these rules pursuant to the Executive Order. The Departments provide an assessment of the potential costs, benefits, and transfers associated with these interim final regulations, summarized in the following table.

TABLE 1—ACCOUNTING TABLE (2011–2013)

Benefits:
Qualitative: By expanding coverage and eliminating cost sharing for the recommended preventive services, the Departments expect access and utilization of these services to increase. To the extent that individuals increase their use of these services the Departments anticipate several benefits: (1) prevention and reduction in transmission of illnesses as a result of immunization and screening of transmissible diseases; (2) delayed onset, earlier treatment, and reduction in morbidity and mortality as a result of early detection, screening, and counseling; (3) increased productivity and fewer sick days; and (4) savings from lower health care costs. Another benefit of these interim final regulations will be to distribute the cost of preventive services more equitably across the broad insured population.
Costs:
Qualitative: New costs to the health care system result when beneficiaries increase their use of preventive services in response to the changes in coverage and cost-sharing requirements of preventive services. The magnitude of this effect on utilization depends on the price elasticity of demand and the percentage change in prices facing those with reduced cost sharing or newly gaining coverage.
Transfers:

TABLE 1—ACCOUNTING TABLE (2011–2013)—Continued

Qualitative: Transfers will occur to the extent that costs that were previously paid out-of-pocket for certain preventive services will now be covered by group health plans and issuers under these interim final regulations. Risk pooling in the group market will result in sharing expected cost increases across an entire plan or employee group as higher average premiums for all enrollees. However, not all of those covered will utilize preventive services to an equivalent extent. As a result, these interim final regulations create a small transfer from those paying premiums in the group market utilizing less than the average volume of preventive services in their risk pool to those whose utilization is greater than average. To the extent there is risk pooling in the individual market, a similar transfer will occur.

A. The Need for Federal Regulatory Action

As discussed later in this preamble, there is current underutilization of preventive services, which stems from three main factors. First, due to turnover in the health insurance market, health insurance issuers do not currently have incentives to cover preventive services, whose benefits may only be realized in the future when an individual may no longer be enrolled. Second, many preventive services generate benefits that do not accrue immediately to the individual that receives the services, making the individual less likely to take-up, especially in the face of direct, immediate costs. Third, some of the benefits of preventive services accrue to society as a whole, and thus do not get factored into an individual's decision-making over whether to obtain such services.

These interim final regulations address these market failures through two avenues. First, they require coverage of recommended preventive services by non-grandfathered group health plans and health insurance issuers in the group and individual markets, thereby overcoming plans' lack of incentive to invest in these services. Second, they eliminate cost-sharing requirements, thereby removing a barrier that could otherwise lead an individual to not obtain such services, given the long-term and partially external nature of benefits.

These interim final regulations are necessary in order to provide rules that plan sponsors and issuers can use to determine how to provide coverage for certain preventive health care services without the imposition of cost sharing in connection with these services.

B. PHS Act Section 2713, Coverage of Preventive Health Services (26 CFR 54.9815–2713T, 29 CFR 2590.715–2713, 45 CFR 147.130)

1. Summary

As discussed earlier in this preamble, PHS Act section 2713, as added by the Affordable Care Act, and these interim final regulations require a group health plan and a health insurance issuer offering group or individual health insurance coverage to provide benefits for and prohibit the imposition of cost-sharing requirements with respect to the following preventive health services:

- Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force (Task Force). While these guidelines will change over time, for the purposes of this impact analysis, the Departments utilized currently available guidelines, which include blood pressure and cholesterol screening, diabetes screening for hypertensive patients, various cancer and sexually transmitted infection screenings, and counseling related to aspirin use, tobacco cessation, obesity, and other topics.
- Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (Advisory Committee) with respect to the individual involved.
- With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).
- With respect to women, evidence-informed preventive care and screening provided for in comprehensive guidelines supported by HRSA (not otherwise addressed by the recommendations of the Task Force). The Department of HHS is developing these guidelines and expects to issue them no later than August 1, 2011.

2. Preventive Services

For the purposes of this analysis, the Departments used the relevant recommendations of the Task Force and Advisory Committee and current HRSA guidelines as described in section V later in this preamble. In addition to covering immunizations, these lists include such services as blood pressure and cholesterol screening, diabetes screening for hypertensive patients, various cancer and sexually transmitted infection screenings, genetic testing for the BRCA gene, adolescent depression screening, lead testing, autism testing, and oral health screening and counseling related to aspirin use, tobacco cessation, and obesity.

3. Estimated Number of Affected Entities

For purposes of the new requirements in the Affordable Care Act that apply to group health plans and health insurance issuers in the group and individual markets, the Departments have defined a large group health plan as an employer plan with 100 or more workers and a small group plan as an employer plan with less than 100 workers. The Departments estimated that there are approximately 72,000 large and 2.8 million small ERISA-covered group health plans with an estimated 97.0 million participants in large group plans and 40.9 million participants in small group plans.[6] The Departments estimate that there are 126,000 governmental plans with 36.1 million participants in large plans and 2.3 million participants in small plans.[7] The Departments estimate there are 16.7 million individuals under age 65 covered by individual health insurance policies.[8]

As described in the Departments' interim final regulations relating to status as a grandfathered health plan,[9] the Affordable Care Act preserves the ability of individuals to retain coverage under a group health plan or health insurance coverage in which the individual was enrolled on March 23, 2010 (a grandfathered health plan). Group health plans, and group and individual health insurance coverage, that are grandfathered health plans do not have to meet the requirements of these interim final regulations. Therefore, only plans and issuers offering group and individual health insurance coverage that are not grandfathered health plans will be affected by these interim final regulations.

[6] All participant counts and the estimates of individual policies are from the U.S. Department of Labor, EBSA calculations using the March 2008 Current Population Survey Annual Social and Economic Supplement and the 2008 Medical Expenditure Panel Survey.

[7] Estimate is from the 2007 Census of Government.

[8] US Census Bureau, Current Population Survey, March 2009.

[9] 75 FR 34538 (June 17, 2010).

Plans can choose to relinquish their grandfather status in order to make certain otherwise permissible changes to their plans.[10] The Affordable Care Act provides plans with the ability to maintain grandfathered status in order to promote stability for consumers while allowing plans and sponsors to make reasonable adjustments to lower costs and encourage the efficient use of services. Based on an analysis of the changes plans have made over the past few years, the Departments expect that more plans will choose to make these changes over time and therefore the number of grandfathered health plans is expected to decrease. Correspondingly, the number of plans and policies affected by these interim final regulations is likely to increase over time. In addition, the number of individuals receiving the benefits of the Affordable Care Act is likely to increase over time. The Departments' mid-range estimate is that 18 percent of large employer plans and 30 percent of small employer plans would relinquish grandfather status in 2011, increasing over time to 45 percent and 66 percent respectively by 2013, although there is substantial uncertainty surrounding these estimates.[11]

Using the mid-range assumptions, the Departments estimate that in 2011, roughly 31 million people will be enrolled in group health plans subject to the prevention provisions in these interim final regulations, growing to approximately 78 million in 2013.[12] The mid-range estimates suggest that approximately 98 million individuals will be enrolled in grandfathered group health plans in 2013, many of which already cover preventive services (see discussion of the extent of preventive services coverage in employer-sponsored plans later in this preamble).

In the individual market, one study estimated that 40 percent to 67 percent of individual policies terminate each year. Because all newly purchased individual policies are not grandfathered, the Departments expect that a large proportion of individual policies will not be grandfathered, covering up to and perhaps exceeding 10 million individuals.[13]

However, not all of the individuals potentially affected by these interim final regulations will directly benefit given the prevalence and variation in insurance coverage today. State laws will affect the number of entities affected by all or some provision of these interim final regulations, since plans, policies, and enrollees in States that already have certain requirements will be affected to different degrees.[14] For instance, 29 States require that health insurance issuers cover most or all recommended immunizations for children.[15] Of these 29 States, 18 States require first-dollar coverage of immunizations so that the insurers pay for immunizations without a deductible and 12 States exempt immunizations from copayments (*e.g.*, $5, $10, or $20 per vaccine) or coinsurance (*e.g.*, 10 percent or 20 percent of charges). State laws also require coverage of certain other preventive health services. Every State except Utah mandates coverage for some type of breast cancer screening for women. Twenty-eight States mandate coverage for some cervical cancer screening and 13 States mandate coverage for osteoporosis screening.[16]

Estimation of the number of entities immediately affected by some or all provisions of these interim final regulations is further complicated by the fact that, although not all States require insurance coverage for certain preventive services, many health plans have already chosen to cover these services. For example, most health plans cover most childhood and some adult immunizations contained in the recommendations from the Advisory Committee. A survey of small, medium and large employers showed that 78 percent to 80 percent of their point of service, preferred provider organization (PPO), and health maintenance organization (HMO) health plans covered childhood immunizations and 57 percent to 66 percent covered influenza vaccines in 2001.[17] All 61 health plans (HMOs and PPOs) responding to a 2005 America's Health Insurance Plans (AHIP) survey covered childhood immunizations[18] in their best-selling products and almost all health plans (60 out of 61) covered diphtheria-tetanus-pertussis vaccines and influenza vaccines for adults.[19] A survey of private and public employer health plans found that 84 percent covered influenza vaccines in 2002–2003.[20]

Similarly, many health plans already cover preventive services today, but there are differences in the coverage of these services in the group and individual markets. According to a 2009 survey of employer health benefits, over 85 percent of employer-sponsored health insurance plans covered preventive services without having to meet a deductible.[21] Coverage of preventive services does vary slightly by employer size, with large employers being more likely to cover such services than small employers.[22] In contrast, coverage of preventive services is less prevalent and varies more significantly in the individual market.[23] For PPOs,

[10] See 75 FR 34538 (June 17, 2010).

[11] See 75 FR 34538 (June 17, 2010) for a detailed description of the derivation of the estimates for the percentages of grandfathered health plans. In brief, the Departments used data from the 2008 and 2009 Kaiser Family Foundations/Health Research and Educational Trust survey of employers to estimate the proportion of plans that made changes in cost-sharing requirements that would have caused them to relinquish grandfather status if those same changes were made in 2011, and then applied a set of assumptions about how employer behavior might change in response to the incentives created by the grandfather regulations to estimate the proportion of plans likely to relinquish grandfather status. The estimates of changes in 2012 and 2013 were calculated by using the 2011 calculations and assuming that an identical percentage of plan sponsors will relinquish grandfather status in each year.

[12] To estimate the number of individuals covered in grandfathered health plans, the Departments extended the analysis described in 75 FR 34538, and estimated a weighted average of the number of employees in grandfathered health plans in the large employer and small employer markets separately, weighting by the number of employees in each employer's plan. Estimates for the large employer and small employer markets were then combined, using the estimates supplied above that there are 133.1 million covered lives in the large group market, and 43.2 million in the small group market.

[13] Adele M. Kirk. The Individual Insurance Market: A Building Block for Health Care Reform? *Health Care Financing Organization Research Synthesis.* May 2008.

[14] Of note, State insurance requirements do not apply to self-insured group health plans, whose participants and beneficiaries make up 57 percent of covered employees (in firms with 3 or more employees) in 2009 according to a major annual survey of employers due to ERISA preemption of State insurance laws. *See e.g.*, Kaiser Family Foundation and Health Research and Education Trust, *Employer Health Benefits 2009 Annual Survey* (2009).

[15] *See e.g.*, American Academy of Pediatrics, *State Legislative Report* (2009).

[16] See Kaiser Family Foundation, www.statehealthfacts.org.

[17] *See e.g.*, Mary Ann Bondi *et. al.*, "Employer Coverage of Clinical Preventive Services in the United States," *American Journal of Health Promotion, 20(3), pp. 214–222 (2006).*

[18] The specific immunizations include: DTaP (diphtheria and tetanus toxoids and acellular Pertussis), Hib (*Haemophilus influenza* type b), Hepatitis B, inactivated polio, influenza, MMR (measles, mumps, and rubella), pneumococcal, and varicella vaccine.

[19] McPhillips-Tangum C., Rehm B., Hilton O. "Immunization practices and policies: A survey of health insurance plans." *AHIP Coverage.* 47(1), 32–7 (2006).

[20] *See e.g.*, Matthew M. Davis *et. al.*, "Benefits Coverage for Adult Vaccines in Employer-Sponsored Health Plans," University of Michigan for the CDC National Immunizations Program (2003).

[21] *See e.g.*, Kaiser Family Foundation and Health Research and Education Trust, *Employer Health Benefits 2009 Annual Survey* (2009) available at *http://ehbs.kff.org/pdf/2009/7936.pdf.*

[22] *See e.g.*, Mary Ann Bondi *et. al.*, "Employer Coverage of Clinical Preventive Services in the United States," American Journal of Health Promotion, 20(3), pp. 214–222 (2006).

[23] *See e.g.*, Matthew M. Davis et. al., "Benefits Coverage for Adult Vaccines in Employer-Sponsored Health Plans," University of Michigan

only 66.2 percent of single policies purchased covered adult physicals, while 94.1 percent covered cancer screenings.[24]

In summary, the number of affected entities depends on several factors, such as whether a health plan retains its grandfather status, the number of new health plans, whether State benefit requirements for preventive services apply, and whether plans or issuers voluntarily offer coverage and/or no cost sharing for recommended preventive services. In addition, participants, beneficiaries, and enrollees in such plans or health insurance coverage will be affected in different ways: Some will newly gain coverage for recommended preventive services, while others will have the cost sharing that they now pay for such services eliminated. As such, there is considerable uncertainty surrounding estimation of the number of entities affected by these interim final regulations.

4. Benefits

The Departments anticipate that four types of benefits will result from these interim final regulations. First, individuals will experience improved health as a result of reduced transmission, prevention or delayed onset, and earlier treatment of disease. Second, healthier workers and children will be more productive with fewer missed days of work or school. Third, some of the recommended preventive services will result in savings due to lower health care costs. Fourth, the cost of preventive services will be distributed more equitably.

By expanding coverage and eliminating cost sharing for recommended preventive services, these interim final regulations could be expected to increase access to and utilization of these services, which are not used at optimal levels today. Nationwide, almost 38 percent of adult residents over 50 have never had a colorectal cancer screening (such as a sigmoidoscopy or a colonoscopy) [25] and almost 18 percent of women over age 18 have not been screened for cervical cancer in the past three years.[26] Vaccination rates for childhood vaccines are generally high due to State laws requiring certain vaccinations for children to enter school, but recommended childhood vaccines that are not subject to State laws and adult vaccines have lower vaccination rates (e.g., the meningococcal vaccination rate among teenagers is 42 percent).[27] Studies have shown that improved coverage of preventive services leads to expanded utilization of these services,[28] which would lead to substantial benefits as discussed further below.

In addition, these interim final regulations limit preventive service coverage under this provision to services recommended by the Task Force, Advisory Committee, and HRSA. The preventive services given a grade of A or B by the Task Force have been determined by the Task Force to have at least fair or good [29] evidence that the preventive service improves important health outcomes and that benefits outweigh harms in the judgment of an independent panel of private sector experts in primary care and prevention.[30] Similarly, the mission of the Advisory Committee is to provide advice that will lead to a reduction in the incidence of vaccine preventable diseases in the United States, and an increase in the safe use of vaccines and related biological products. The comprehensive guidelines for infants, children, and adolescents supported by HRSA are developed by multidisciplinary professionals in the relevant fields to provide a framework for improving children's health and reducing morbidity and mortality based on a review of the relevant evidence. The statute and interim final regulations limit the preventive services covered to those recommended by the Task Force, Advisory Committee, and HRSA because the benefits of these preventive services will be higher than others that may be popular but unproven.

Research suggests significant health benefits from a number of the preventive services that would be newly covered with no cost sharing by plans and issuers under the statute and these interim final regulations. A recent article in *JAMA* stated, "By one account, increasing delivery of just five clinical preventive services would avert 100,000 deaths per year." [31] These five services are all items and services recommended by the Task Force, Advisory Committee, and/or the comprehensive guidelines supported by HRSA. The National Council on Prevention Priorities (NCPP) estimated that almost 150,000 lives could potentially be saved by increasing the 2005 rate of utilization to 90 percent for eight of the preventive services recommended by the Task Force or Advisory Committee.[32] Table 2 shows eight of the services and the number of lives potentially saved if utilization of preventive services were to increase to 90 percent.

for the CDC National Immunizations Program (2003).

[24] See Individual Health Insurance 2006–2007: A Comprehensive Survey of Premiums, Availability, and Benefits. Available at *http://www.ahipresearch.org/pdfs/Individual_Market_Survey_December_2007.pdf.*

[25] This differs from the Task Force recommendation that individuals aged 50–75 receive fecal occult blood testing, sigmoidoscopy, or colonoscopy screening for colorectal cancer.

[26] For Behavioral Risk Factor Surveillance System Numbers *see e.g.* Centers for Disease Control and Prevention (CDC). *Behavioral Risk Factor Surveillance System Survey Data.* Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, (2008) at *http://apps.nccd.cdc.gov/BRFSS/page.asp?cat=CC&yr=2008&state=UB#CC.*

[27] See *http://www.cdc.gov/vaccines/stats-surv/imz-coverage.htm#nis* for vaccination rates.

[28] *See e.g.*, Jonathan Gruber, *The Role of Consumer Copayments for Health Care: Lessons from the RAND Health Insurance Experiment and Beyond*, Kaiser Family Foundation (Oct. 2006). This paper examines an experiment in which copays randomly vary across several thousand individuals. The author finds that individuals are sensitive to prices for health services—i.e. as copays decline, more services are demanded. *See e.g.,* Sharon Long, "On the Road to Universal Coverage: Impacts of Reform in Massachusetts At One Year," *Health Affairs,* Volume 27, Number 4 (June 2008). The author investigated the case of Massachusetts, where coverage of preventive services became a requirement in 2007, and found that for individuals under 300 percent of the poverty line, doctor visits for preventive care increased by 6.1 percentage points in the year after adoption, even after controlling for observable characteristics. Additionally, the incidence of individuals citing cost as the reason for not receiving preventive screenings declined by 2.8 percentage points from 2006 to 2007. In the Massachusetts case, these preventive care services were not necessarily free; therefore, economists would expect a higher differential under these interim final rules because of the price sensitivity of health care usage.

[29] The Task Force defines good and fair evidence as follows. Good: Evidence includes consistent results from well-designed, well-conducted studies in representative populations that directly assess effects on health outcomes. Fair: Evidence is sufficient to determine effects on health outcomes, but the strength of the evidence is limited by the number, quality or consistency of the individual studies, generalizability to routine practice or indirect nature of the evidence on health outcomes. See *http://www.ahrq.gov/clinic/uspstf/gradespre.htm#drec.*

[30] See *http://www.ahrq.gov/clinic/uspstf/gradespre.htm#drec* for details of the Task Force grading.

[31] Woolf, Steven. A Closer Look at the Economic Argument for Disease Prevention. *JAMA* 2009;301(5):536–538.

[32] See National Commission on Prevention Priorities. *Preventive Care: A National Profile on Use, Disparities, and Health Benefits.* Partnership for Prevention, August 2007 at *http://www.prevent.org/content/view/129/72/#citations* accessed on 6/22/2010. Lives saved were estimated using models previously developed to rank clinical preventive services. See Maciosek MV, Edwards NM, Coffield AB, Flottemesch TJ, Nelson WW, Goodman MJ, Rickey DA, Butani AB, Solberg LI. Priorities among effective clinical preventive services: methods. *Am J Prev Med* 2006; 31(1):90–96.

TABLE 2.—LIVES SAVED FROM INCREASING UTILIZATION OF SELECTED PREVENTIVE SERVICES TO 90 PERCENT

Preventive service	Population group	Percent utilizing preventive service in 2005	Lives saved annually if percent utilizing preventive service increased to 90 percent
Regular aspirin use	Men 40+ and women 50+	40	45,000
Smoking cessation advice and help to quit	All adult smokers	28	42,000
Colorectal cancer screening	Adults 50+	48	14,000
Influenza vaccination	Adults 50+	37	12,000
Cervical cancer screening in the past 3 years	Women 18–64	83	620
Cholesterol screening	Men 35+ and women 45+	79	2,450
Breast cancer screening in the past 2 years	Women 40+	67	3,700
Chlamydia screening	Women 16–25	40	30,000

Source: National Commission on Prevention Priorities, 2007.

Since financial barriers are not the only reason for sub-optimal utilization rates, population-wide utilization of preventive services is unlikely to increase to the 90 percent level assumed in Table 2 as a result of these interim final regulations. Current utilization of preventive services among insured populations varies widely, but the Departments expect that utilization will increase among those individuals in plans affected by the regulation because the provisions eliminate cost sharing and require coverage for these services.

These interim final regulations are expected to increase the take-up rate of preventive services and are likely, over time, to lead physicians to increase their use of these services knowing that they will be covered, and covered with zero copayment. In the absence of data on the elasticity of demand for these specific services, it is difficult to know precisely how many more patients will use these services. Evidence from studies comparing the utilization of preventive services such as blood pressure and cholesterol screening between insured and uninsured individuals with relatively high incomes suggests that coverage increases usage rates in a wide range between three and 30 percentage points, even among those likely to be able to afford basic preventive services out-of-pocket.[33] A reasonable assumption is that the average increase in utilization of these services will be modest, perhaps on the order of 5 to 10 percentage points for some of them. For services that are generally covered without cost sharing in the current market, the Departments would expect minimal change in utilization.

Preventive services' benefits have also been evaluated individually. Effective cancer screening, early treatment, and sustained risk reduction could reduce the death rate due to cancer by 29 percent.[34] Improved blood sugar control could reduce the risk for eye disease, kidney disease and nerve disease by 40 percent in people with Type 1 or Type 2 diabetes.[35]

Some recommended preventive services have both individual and public health value. Vaccines have reduced or eliminated serious diseases that, prior to vaccination, routinely caused serious illnesses or deaths. Maintaining high levels of immunization in the general population protects the un-immunized from exposure to the vaccine-preventable disease, so that individuals who cannot receive the vaccine or who do not have a sufficient immune response to the vaccine to protect against the disease are indirectly protected.[36]

A second type of benefit from these interim final regulations is improved workplace productivity and decreased absenteeism for school children. Numerous studies confirm that ill health compromises worker output and that health prevention efforts can improve worker productivity. For example, one study found that 69 million workers reported missing days due to illness and 55 million workers reported a time when they were unable to concentrate at work because of their own illness or a family member's illness.[37] Together, labor time lost due to health reasons represents lost economic output totaling $260 billion per year.[38] Prevention efforts can help prevent these types of losses. Studies have also shown that reduced cost-sharing for medical services results in fewer restricted-activity days at work,[39] and increased access to health insurance coverage improves labor market outcomes by improving worker health.[40] Thus, the expansion of benefits and the elimination of cost sharing for preventive services as provided in these

[33] The Commonwealth Fund. "Insurance Coverage and the Receipt of Preventive Care." 2005. *http://www.commonwealthfund.org/Content/Performance-Snapshots/Financial-and-Structural-Access-to-Care/Insurance-Coverage-and-Receipt-of-Preventive-Care.aspx.*

[34] Curry, Susan J., Byers, Tim, and Hewitt, Maria, eds. 2003. *Fulfilling the Potential of Cancer Prevention and Early Detection.* Washington, DC: National Academies Press.

[35] Centers for Disease Control and Prevention. 2010. Diabetes at a Glance. *See http://www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2010/diabetes_aag.pdf.*

[36] *See* Modern Infectious Disease Epidemiology by Johan Giesecke 1994, Chapter 18, The Epidemiology of Vaccination.

[37] Health and Productivity Among U.S. Workers, Karen Davis, Ph.D., Sara R. Collins, Ph.D., Michelle M. Doty, Ph.D., Alice Ho, and Alyssa L. Holmgren, The Commonwealth Fund, August 2005 *http://www.commonwealthfund.org/Content/Publications/Issue-Briefs/2005/Aug/Health-and-Productivity-Among-U-S-Workers.aspx.*

[38] Ibid.

[39] *See e.g.,* RAND, *The Health Insurance Experiment: A Classic RAND Study Speaks to the Current Health Care Reform Debate,* Rand Research Brief, Number 9174 (2006), at *http://www.rand.org/pubs/research_briefs/2006/RAND_RB9174.pdf* and Janet Currie *et al.,* "Has Public Health Insurance for Older Children Reduced Disparities in Access to Care and Health Outcomes?", *Journal of Health Economics,* Volume 27, Issue 6, pages 1567–1581 (Dec. 2008). With early childhood interventions, there appear to be improved health outcomes in later childhood. Analogously, health interventions in early adulthood could have benefits for future productivity.

[40] In a RAND policy brief, the authors cite results from the RAND Health Insurance Experiment in which cost-sharing is found to correspond with workers having fewer restricted-activity days—evidence that free care for certain services may be productivity enhancing. *See e.g.,* RAND, *The Health Insurance Experiment: A Classic RAND Study Speaks to the Current Health Care Reform Debate,* Rand Research Brief, Number 9174 (2006), at *http://www.rand.org/pubs/research_briefs/2006/RAND_RB9174.pdf. See e.g.* Janet Currie *et. al.,* "Has Public Health Insurance for Older Children Reduced Disparities in Access to Care and Health Outcomes?" *Journal of Health Economics,* Volume 27, Issue 6, pages 1567–1581 (Dec. 2008). With early childhood interventions, there appears to be improved health outcomes in later childhood. Analogously, health interventions in early adulthood could have benefits for future productivity. Council of Economic Advisers. "The Economic Case for Health Reform." (2009).

interim final regulations can be expected to have substantial productivity benefits in the labor market.

Illnesses also contribute to increased absenteeism among school children, which could be avoided with recommended preventive services. In 2006, 56 percent of students missed between one and five days of school due to illness, 10 percent missed between six and ten days and five percent missed 11 or more days.[41] Obesity in particular contributes to missed school days: One study from the University of Pennsylvania found that overweight children were absent on average 20 percent more than their normal-weight peers.[42] Studies also show that influenza contributes to school absenteeism, and vaccination can reduce missed school days and indirectly improve community health.[43] These interim final regulations will ensure that children have access to preventive services, thus decreasing the number of days missed due to illness.[44] Similarly, regular pediatric care, including care by physicians specializing in pediatrics, can improve child health outcomes and avert preventable health care costs. For example, one study of Medicaid enrolled children found that when children were up to date for their age on their schedule of well-child visits, they were less likely to have an avoidable hospitalization at a later time.[45]

A third type of benefit from some preventive services is cost savings. Increasing the provision of preventive services is expected to reduce the incidence or severity of illness, and, as a result, reduce expenditures on treatment of illness. For example, childhood vaccinations have generally been found to reduce such expenditures by more than the cost of the vaccinations themselves and generate considerable benefits to society. Researchers at the Centers for Disease Control and Prevention (CDC) studying the economic impact of DTaP (diphtheria and tetanus toxoids and acellular Pertussis), Td (tetanus and diphtheria toxoids), Hib (*Haemophilus influenza* type b), IPV (inactivated poliovirus), MMR (measles, mumps and rubella), Hepatitis B and varicella routine childhood vaccines found that every dollar spent on immunizations in 2001 was estimated to save $5.30 on direct health care costs and $16.50 on total societal costs of the diseases as they are prevented or reduced (direct health care associated with the diseases averted were $12.1 billion and total societal costs averted were $33.9 billion).[46]

A review of preventive services by the National Committee on Prevention Priorities found that, in addition to childhood immunizations, two of the recommended preventive services—discussing aspirin use with high-risk adults and tobacco use screening and brief intervention—are cost-saving on net.[47] By itself, tobacco use screening with a brief intervention was found to save more than $500 per smoker.[48]

Another area where prevention could achieve savings is obesity prevention and reduction. Obesity is widely recognized as an important driver of higher health care expenditures.[49] The Task Force recommends children over age six and adults be screened for obesity and be offered or referred to counseling to improve weight status or promote weight loss. Increasing obesity screening and referrals to counseling should decrease obesity and its related costs. If providers are able to proactively identify and monitor obesity in child patients, they may reduce the incidence of adult health conditions that can be expensive to treat, such as diabetes, hypertension, and adult obesity.[50] One recent study estimated that a one-percentage-point reduction in obesity among twelve-year-olds would save $260.4 million in total medical expenditures.[51]

A full quantification of the cost savings from the extension of coverage of preventive services in these interim final regulations is not possible, but to illustrate the potential savings, an assessment of savings from obesity reduction was conducted. According to the CDC, in 2008, 34.2 percent of U.S. adults and 16.9 percent of children were obese (defined as having a body mass index (BMI) of 30.0 or greater).[52] Obesity is associated with increased risk for coronary heart disease, hypertension, stroke, type 2 diabetes, several types of cancer, diminished mobility, and social stigmatization.[53] As a result, obesity is widely recognized as an important driver of higher health care expenditures on an individual [54] and national level.[55]

As described below, the Departments' analysis assumes that the utilization of preventive services will increase when they are covered with zero copayment, and these interim final regulations are expected to increase utilization of dietary counseling services both among people who currently have the service covered with a copayment and among people for whom the service is not currently covered at all.

Data from the 2009 Kaiser Family Foundation Employer Health Benefits Survey shows that 73 percent of employees with employer-sponsored insurance from a small (< 200 employees) employer do not currently have coverage for weight loss programs,

[41] Bloom B, Cohen RA. Summary health statistics for U.S. children: National Health Interview Survey, 2006. Vital Health Stat 2007;10(234). Available at *http://www.cdc.gov/nchs/nhis.htm.*

[42] University of Pennsylvania 2007: *http://www.upenn.edu/pennnews/news/childhood-obesity-indicates-greater-risk-school-absenteeism-university-pennsylvania-study-revea.*

[43] Davis, Mollie M., James C. King, Ginny Cummings, and Laurence S. Madger. "Countywide School-Based Influenza Immunization: Direct and Indirect Impact on Student Absenteeism." *Pediatrics* 122.1 (2008).

[44] Moonie, Sheniz, David A. Sterling, Larry Figgs, and Mario Castro. "Asthma Status and Severity Affects Missed School Days." *Journal of School Health* 76.1 (2006): 18–24.

[45] Bye, "Effectiveness of Compliance with Pediatric Preventative Care Guidelines Among Medicaid Beneficiaries."

[46] Fangjun Zhou, Jeanne Santoli, Mark L. Messonnier, Hussain R. Yusuf, Abigail Shefer, Susan Y. Chu, Lance Rodewald, Rafael Harpaz. Economic Evaluation of the 7-Vaccine Routine Childhood Immunization Schedule in the United States. *Archives of Pediatric and Adolescent Medicine 2005;* 159(12): 1136–1144. The estimates of the cost savings are based on current immunization levels. The incremental impact of increasing immunization rates is likely to be smaller, but still significant and positive.

[47] Maciosek MV, Coffield AB, Edwards NM, Coffield AB, Flottemesch TJ, Goodman MJ, Solberg LI. Priorities among effective clinical preventive services: Results of a Systematic Review and Analysis. *Am J Prev Med 2006;* 31(1):52–61.

[48] Solberg LI, Maciosek, MV, Edwards NM, Khanchandani HS, and Goodman MJ. Repeated tobacco-use screening and intevention in clinical practice: Health impact and cost effectiveness. American Journal of Preventive Medicine. 2006;31(1).

[49] Congressional Budget Office. "Technological Change and the Growth of Health Care Spending." January 2008. Box 1, pdf p. 18. *http://www.cbo.gov/ftpdocs/89xx/doc8947/01-31-TechHealth.pdf.*

[50] "Working Group Report on Future Research Directions in Childhood Obesity Prevention and Treatment." National Heart, Lung and Blood Institute, National Institutes of Health, U.S. Department of Health and Human Services (2007), available at *http://www.nhlbi.nih.gov/meetings/workshops/child-obesity/index.htm.*

[51] *Ibid.*

[52] Centers for Disease Control and Prevention. "Obesity and Overweight." 2010. *http://www.cdc.gov/nchs/fastats/overwt.htm.*

[53] Agency for Healthcare Research and Quality (AHRQ). "Screening for Obesity in Adults." December 2003. *http://www.ahrq.gov/clinic/3rduspstf/obesity/obesrr.pdf.*

[54] Thorpe, Kenneth E. "The Future Costs of Obesity: National and State Estimates of the Impact of Obesity on Direct Health Care Expenses." November 2009; McKinsey Global Institute. "Sample data suggest that obese adults can incur nearly twice the annual health care costs of normal-weight adults." 2007.

[55] Congressional Budget Office. "Technological Change and the Growth of Health Care Spending." January 2008. Box 1, pdf p. 18. *http://www.cbo.gov/ftpdocs/89xx/doc8947/01-31-TechHealth.pdf.*

compared to 38 percent at large firms.[56] In the illustrative analysis below, the share of individuals without weight loss coverage in the individual market is assumed to be equal to the share in the small group market.

The size of the increase in the number of individuals receiving dietary counseling or other weight loss services will be limited by current physician practice patterns, in which relatively few individuals who are obese receive physician recommendations for dietary counseling. In one study of patients at an internal medicine clinic in the Bronx, NY, approximately 15 percent of obese patients received a recommendation for dietary counseling.[57] Similarly, among overweight and obese patients enrolled in the Cholesterol Education and Research Trial, approximately 15 to 20 percent were referred to nutrition counseling.[58]

These interim final regulations are expected to increase the take-up rate of counseling among patients who are referred to it, and may, over time, lead physicians to increase their referral to such counseling, knowing that it will be covered, and covered without cost sharing. The effect of these interim final regulations is expected to be magnified because of the many other public and private sector initiatives dedicated to combating the obesity epidemic.

In the absence of data on take-up of counseling among patients who are referred by their physicians, it is difficult to know what fraction of the estimated 15 percent to 20 percent of patients who are currently referred to counseling follow through on that referral, or how that fraction will change after coverage of these services is expanded. A reasonable assumption is that utilization of dietary counseling among patients who are obese might increase by five to 10 percentage points as a result of these interim final regulations. If physicians change their behavior and increase the rate at which they refer to counseling, the effect might be substantially larger.

The share of obese individuals without weight loss coverage is estimated to be 29 percent.[59] It is assumed that obese individuals have health care costs 39 percent above average, based on a McKinsey Global Institute analysis.[60] The Task Force noted that counseling interventions led to sustained weight loss ranging from four percent to eight percent of body weight, although there is substantial heterogeneity in results across interventions, with many interventions having little long-term effect.[61] Assuming midpoint reduction of six percent of body weight, the BMI for an individual taking up such an intervention would fall by six percent as well, as height would remain constant. Based on the aforementioned McKinsey Global Institute analysis, a six percent reduction in BMI for an obese individual (from 32 to around 30, for example) would result in a reduction in health care costs of approximately five percent. This parameter for cost reduction is subject to considerable uncertainty, given the wide range of potential weight loss strategies with varying degrees of impact on BMI, and their interconnectedness with changes in individual health care costs.

Multiplying the percentage reduction in health care costs by the total premiums of obese individuals newly gaining obesity prevention coverage allows for an illustrative calculation of the total dollar reduction in premiums, and dividing by total premiums for the affected population allows for an estimate of the reduction in average premiums across the entire affected population. Doing so results in a potential private premium reduction of 0.05 percent to 0.1 percent from lower health care costs due to a reduction in obesity for enrollees in non-grandfathered plans. This does not account for potential savings in Medicaid, Medicare, or other health programs.

A fourth benefit of these interim final regulations will be to distribute the cost of preventive services more equitably across the broad insured population. Some Americans in plans affected by these regulations currently have no coverage of certain recommended preventive services, and pay for them entirely out-of-pocket. For some individuals who currently have no coverage of certain recommended preventive services, these interim final regulations will result in a large savings in out-of-pocket payments, and only a small increase in premiums. Many other Americans have limited coverage of certain recommended preventive services, with large coinsurance or deductibles, and also make substantial out-of-pocket payments to obtain preventive services. Some with limited coverage of preventive services will also experience large savings as a result of these interim final regulations. Reductions in out-of-pocket costs are expected to be largest among people in age groups in which relatively expensive preventive services are most likely to be recommended.

5. *Costs and Transfers*

The changes in how plans and issuers cover the recommended preventive services resulting from these interim final regulations will result in changes in covered benefits and premiums for individuals in plans and health insurance coverage subject to these interim final regulations. New costs to the health system result when beneficiaries increase their use of preventive services in response to the changes in coverage of preventive services. Cost sharing, including coinsurance, deductibles, and copayments, divides the costs of health services between the insurer and the beneficiaries. The removal of cost sharing increases the quantity of services demanded by lowering the direct cost of the service to consumers. Therefore, the Departments expect that the statute and these interim final regulations will increase utilization of the covered preventive services. The magnitude of this effect on utilization depends on the price elasticity of demand.

Several studies have found that individuals are sensitive to prices for health services.[62] Evidence that consumers change their utilization of preventive services is available from CDC researchers who studied out-of-pocket costs of immunizations for

[56] Kaiser Family Foundation. 2009 Employer Health Benefits Annual Survey. Public Use File provided to CEA; documentation of statistical analysis available upon request. *See http://ehbs.kff.org.*

[57] Davis NJ, Emerenini A, Wylie-Rosett J. "Obesity management: physician practice patterns and patient preference," *Diabetes Education.* 2006 Jul–Aug; 32(4):557–61.

[58] Molly E. Waring, PhD, Mary B. Roberts, MS, Donna R. Parker, ScD and Charles B. Eaton, MD, MS. "Documentation and Management of Overweight and Obesity in Primary Care," *The Journal of the American Board of Family Medicine* 22 (5): 544–552 (2009).

[59] This estimate is constructed using a weighted average obesity rate taking into account the share of the population aged 0 to 19 and 20 to 74 and their respective obesity rates, derived from Census Bureau and Centers for Disease Control and Prevention data. U.S. Census Bureau. "Current Population Survey (CPS) Table Creator." 2010. *http://www.census.gov/hhes/www/cpstc/cps_table_creator.html.* Centers for Disease Control and Prevention. "Obesity and Overweight." 2010. *http://www.cdc.gov/nchs/fastats/overwt.htm.*

[60] McKinsey Global Institute Analysis provided to CEA.

[61] Agency for Healthcare Research and Quality (AHRQ). "Screening for Obesity in Adults." December 2003. p. 4. *http://www.ahrq.gov/clinic/3rduspstf/obesity/obesrr.pdf.*

[62] *See e.g.,* Jonathan Gruber, *The Role of Consumer Copayments for Health Care: Lessons from the RAND Health Insurance Experiment and Beyond,* Kaiser Family Foundation (Oct. 2006). This paper examines an experiment in which copays randomly vary across several thousand individuals. The author finds that individuals are sensitive to prices for health services—*i.e.,* as copays decline, more services are demanded.

privately insured children up to age 5 in families in Georgia in 2003, to find that a one percent increase in out-of-pocket costs for routine immunizations (DTaP, IPV, MMR, Hib, and Hep B) was associated with a 0.07 percent decrease in utilization.[63]

Along with new costs of induced utilization, there are transfers associated with these interim final regulations. A transfer is a change in who pays for the services, where there is not an actual change in the level of resources used. For example, costs that were previously paid out-of-pocket for certain preventive services will now be covered by plans and issuers under these interim final regulations. Such a transfer of costs could be expected to lead to an increase in premiums.

a. Estimate of Average Changes in Health Insurance Premiums

The Departments assessed the impact of eliminating cost sharing, increases in services covered, and induced utilization on the average insurance premium using a model to evaluate private health insurance plans against a nationally representative population. The model is based on the Medical Expenditure Panel Survey data from 2004, 2005, and 2006 on household spending on health care, which are scaled to levels consistent with the CMS projections of the National Health Expenditure Accounts.[64] This data is combined with data from the Employer Health Benefits Surveys conducted by the Kaiser Family Foundation and Health Research and Education Trust to model a "typical PPO coverage" plan. The model then allows the user to assess changes in covered expenses, benefits, premiums, and induced utilization of services resulting from changes in the characteristics of the plan. The analysis of changes in coverage is based on the average per-person covered expenses and insurance benefits. The average covered expense is the total charge for covered services; insurance benefits are the part of the covered expenses covered by the insurer. The effect on the average premium is then estimated based on the percentage changes in the insurance benefits and the distribution of the individuals across individual and group markets in non-grandfathered plans. The Departments assume that the percent increase for insurance benefits and premiums will be the same. This is based on two assumptions: (1) That administrative costs included in the premium will increase proportionally with the increase in insurance benefits; and (2) that the increases in insurance benefits will be directly passed on to the consumer in the form of higher premiums. These assumptions bias the estimates of premium changes upward. Using this model, the Departments assessed: (1) Changes in cost-sharing for currently covered and utilized services, (2) changes in services covered, and (3) induced utilization of preventive services. There are several additional sources of uncertainty concerning these estimates. First, there is no accurate, granular data on exactly what baseline coverage is for the particular preventive services addressed in these interim final regulations. Second, there is uncertainty over behavioral assumptions related to additional utilization that results from reduced cost-sharing. Therefore, after providing initial estimates, the Departments provide a sensitivity analysis to capture the potential range of impacts of these interim final regulations.

From the Departments' analysis of the Medical Expenditure Panel Survey (MEPS) data, controlled to be consistent with projections of the National Health Expenditure Accounts, the average person with employer-sponsored insurance (ESI) has $264 in covered expenses for preventive services, of which $240 is paid by insurance, and $24 is paid out-of-pocket.[65] When preventive services are covered with zero copayment, the Departments expect the average preventive benefit (holding utilization constant) will increase by $24. This is a 0.6 percent increase in insurance benefits and premiums for plans that have relinquished their grandfather status. A similar, but larger effect is expected in the individual market because existing evidence suggests that individual health insurance policies generally have less generous benefits for preventive services than group health plans. However, the evidence base for current coverage and cost sharing for preventive services in individual health insurance policies is weaker than for group health plans, making estimation of the increase in average benefits and premiums in the individual market highly uncertain.

For analyses of changes in covered services, the Departments used the Blue Cross/Blue Shield Standard (BC/BS) plan offered through the Federal Employees Health Benefits Program as an average plan.[66] Other analyses have used the BC/BS standard option as an average plan as it was designed to reflect standard practice within employer-sponsored health insurance plans.[67] BC/BS covers most of the preventive services listed in the Task Force and Advisory Committee recommendations, and most of the preventive services listed in the comprehensive guidelines for infants, children, and adolescents supported by HRSA. Not covered by the BC/BS Standard plan are the recommendations for genetic testing for the BRCA gene, adolescent depression screening,[68] lead testing, autism testing, and oral health screening.[69]

The Departments estimated the increase in benefits from newly covered services by estimating the number of new services that would be provided times the cost of providing the services, and then spread these new costs across the total insured population. The Departments estimated that adding coverage for genetic screening and depression screening would increase insurance benefits an estimated 0.10 percent. Adding lead testing, autism testing, and oral health screening would increase insurance benefits by an estimated 0.02 percent. This results in a total average increase in insurance benefits on these services of 0.12 percent, or just over $4 per insured person. This increase represents a mixture of new costs and transfers, dependent on whether beneficiaries previously would have purchased these services on their own. It is also important to remember that actual plan

[63] *See e.g.,* Noelle-Angelique Molinari *et al.,* "Out-of-Pocket Costs of Childhood Immunizations: A Comparison by Type of Insurance Plan," *Pediatrics,* 120(5) pp. 148–156 (2006).

[64] The National Health Expenditure Accounts (NHEA) are the official estimates of total health care spending in the United States. *See http://www.cms.gov/NationalHealthExpendData/02_NationalHealthAccountsHistorical.asp.*

[65] The model does not distinguish between recommended and non-recommended preventive services, and so this likely represents an overestimate of the insurance benefits for preventive services.

[66] The Blue Cross Blue Shield standard option plan documentation is available online at *http://fepblue.org/benefitplans/standard-option/index.html.*

[67] Frey A, Mika S, Nuzum R, and Schoen C. "Setting a National Minimum Standard for Health Benefits: How do State Benefit Mandates Compare with Benefits in Large-Group Plans?" Issue Brief. Commonwealth Fund June 2009 available at *http://www.commonwealthfund.org/Content/Publications/Issue-Briefs/2009/Jun/Setting-a-National-Minimum-Standard-for-Health-Benefits.aspx.*

[68] The Task Force recommends that women whose family history is associated with an increased risk for deleterious mutations in *BRCA1* or *BRCA2* genes be referred for genetic counseling and evaluation for BRCA testing and screening of adolescents (12–18 years of age) for major depressive disorder (MDD) when systems are in place to ensure accurate diagnosis, psychotherapy (cognitive-behavioral or interpersonal), and follow-up.

[69] Lead, autism, and oral health screening are from the HRSA comprehensive guidelines.

impacts will vary depending on baseline benefit levels, and that grandfathered health plans will not experience any impact from these interim final regulations. The Departments expect the increase to be larger in the individual market because coverage of preventive services in the individual market is less complete than coverage in the group market, but as noted previously, the evidence base for the individual market is weaker than that of the group market, making detailed estimates of the size of this effect difficult and highly uncertain.

Actuaries use an "induction formula" to estimate the behavioral change in response to changes in the relative levels of coverage for health services. For this analysis, the Departments used the model to estimate the induced demand (the increased use of preventive services). The model uses a standard actuarial formula for induction 1/(1+alpha*P), where alpha is the "induction parameter" and P is the average fraction of the cost of services paid by the consumer. The induction parameter for physician services is 0.7, derived by the standard actuarial formula that is generally consistent with the estimates of price elasticity of demand from the RAND Health Insurance Experiment and other economic studies.[70] Removing cost sharing for preventive services lowers the direct cost to consumers of using preventive services, which induces additional utilization, estimated with the model above to increase covered expenses and benefits by approximately $17, or 0.44 percent in insurance benefits in group health plans. The Departments expect a similar but larger effect in the individual market, although these estimates are highly uncertain.

The Departments calculated an estimate of the average impact using the information from the analyses described above, using estimates of the number of individuals in non-grandfathered health plans in the group and individual markets in 2011. The Departments estimate that premiums will increase by approximately 1.5 percent on average for enrollees in non-grandfathered plans. This estimate assumes that any changes in insurance benefits will be directly passed on to the consumer in the form of changes in premiums. As mentioned earlier, this assumption biases the estimates of premium change upward.

[70] Standard formula best described in "Quantity-Price Relationships in Health Insurance", Charles L Trowbridge, Chief Actuary, Social Security Administration (DHEW Publication No. (SSA)73–11507, November 1972).

b. Sensitivity analysis

As discussed previously, there is substantial uncertainty associated with the estimates presented above. To address the uncertainty in the group market, the Departments first varied the estimated change to underlying benefits, to address the particular uncertainty behind the estimate of baseline coverage of preventive services in the group market. The estimate for the per person annual increase in insurance benefits from adding coverage for new services is approximately $4. The Departments considered the impact of a smaller and larger addition in benefits of approximately $2 and $6 per person. To consider the impact of uncertainty around the size of the behavioral change (that is, the utilization of more services when cost sharing is eliminated), the Departments analyzed the impact on insurance benefits if the behavioral change were 15 percent smaller and 15 percent larger.

In the individual market, to accommodate the greater uncertainty relative to the group market, the Departments considered the impact of varying the increase in benefits resulting from cost shifting due to the elimination of cost sharing, in addition to varying the cost of newly covered services and behavioral change.

Combining results in the group and individual markets for enrollees in non-grandfathered plans, the Departments' low-end is a few tenths of a percent lower than the mid-range estimate of approximately 1.5 percent, and the high-end estimate is a few tenths of a percent higher. Grandfathered health plans are not subject to these interim final regulations and therefore would not experience this premium change.

6. Alternatives Considered

Several provisions in these interim final regulations involved policy choices. One was whether to allow a plan or issuer to impose cost sharing for an office visit when a recommended preventive service is provided in that visit. Sometimes a recommended preventive service is billed separately from the office visit; sometimes it is not. The Departments decided that the cost sharing prohibition of these interim final regulations applies to the specific preventive service as recommended by the guidelines. Therefore, if the preventive service is billed separately from the office visit, it is the preventive service that has cost sharing waived, not the entire office visit.

A second policy choice was if the preventive service is not billed separately from the office visit, whether these interim final regulations should prohibit cost sharing for any office visit in which any recommended preventive service was administered, or whether cost sharing should be prohibited only when the preventive service is the primary purpose of the office visit. Prohibiting cost sharing for office visits when any recommended preventive service is provided, regardless of the primary purpose of the visit, could lead to an overly broad application of these interim final regulations; for example, a person who sees a specialist for a particular condition could end up with a zero copayment simply because his or her blood pressure was taken as part of the office visit. This could create financial incentives for consumers to request preventive services at office visits that are intended for other purposes in order to avoid copayments and deductibles. The increased prevalence of the application of zero cost sharing would lead to increased premiums compared with the chosen option, without a meaningful additional gain in access to preventive services.

A third issue involves health plans that have differential cost sharing for services provided by providers who are in and out of their networks. These interim final regulations provide that a plan or issuer is not required to provide coverage for recommended preventive services delivered by an out-of-network provider. The plan or issuer may also impose cost sharing for recommended preventive services delivered by an out-of-network provider. The Departments considered that requiring coverage by out-of-network providers at no cost sharing would result in higher premiums for these interim final regulations. Plans and issuers negotiate allowed charges with in-network providers as a way to promote effective, efficient health care, and allowing differences in cost sharing in- and out-of-network enables plans to encourage use of in-network providers. Allowing zero cost sharing for out of network providers could reduce providers' incentives to participate in insurer networks. The Departments decided that permitting cost sharing for recommended preventive services provided by out-of-network providers is the appropriate option to preserve choice of providers for individuals, while avoiding potentially larger increases in costs and transfers as well as potentially lower quality care.

C. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes

certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B or title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815.

Moreover, under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These interim final regulations are exempt from APA, because the Departments made a good cause finding that a general notice of proposed rulemaking is not necessary earlier in this preamble. Therefore, the RFA does not apply and the Departments are not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. Consistent with the policy of the RFA, the Departments encourage the public to submit comments that suggest alternative rules that accomplish the stated purpose of the Affordable Care Act and minimize the impact on small entities.

D. Special Analyses—Department of the Treasury

Notwithstanding the determinations of the Department of Labor and Department of Health and Human Services, for purposes of the Department of the Treasury, it has been determined that this Treasury decision is not a significant regulatory action for purposes of Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the APA (5 U.S.C. chapter 5) does not apply to these interim final regulations. For the applicability of the RFA, refer to the Special Analyses section in the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

E. Paperwork Reduction Act: Department of Labor, Department of the Treasury, and Department of Health and Human Services

These interim final regulations are not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502 (11).

F. Congressional Review Act

These interim final regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and have been transmitted to Congress and the Comptroller General for review.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rules that may result in annual expenditures of $100 million (as adjusted for inflation) by State, local and tribal governments or the private sector. These interim final regulations are not subject to the Unfunded Mandates Reform Act because they are being issued as interim final regulations. However, consistent with the policy embodied in the Unfunded Mandates Reform Act, these interim final regulations have been designed to be the least burdensome alternative for State, local and tribal governments, and the private sector, while achieving the objectives of the Affordable Care Act.

H. Federalism Statement—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Departments' view, these interim final regulations have federalism implications, because they have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. However, in the Departments' view, the federalism implications of these interim final regulations are substantially mitigated because, with respect to health insurance issuers, the Departments expect that the majority of States will enact laws or take other appropriate action resulting in their meeting or exceeding the Federal standards.

In general, through section 514, ERISA supersedes State laws to the extent that they relate to any covered employee benefit plan, and preserves State laws that regulate insurance, banking, or securities. While ERISA prohibits States from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the HIPAA requirements (including those of the Affordable Care Act) are not to be "construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement" of a Federal standard. The conference report accompanying HIPAA indicates that this is intended to be the "narrowest" preemption of State laws. (*See* House Conf. Rep. No. 104–736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018.) States may continue to apply State law requirements except to the extent that such requirements prevent the application of the Affordable Care Act requirements that are the subject of this rulemaking. State insurance laws that are more stringent than the Federal requirements are unlikely to "prevent the application of" the Affordable Care Act, and be preempted. Accordingly, States have significant latitude to impose requirements on health insurance issuers that are more restrictive than the Federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit

the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected State and local officials, including attending conferences of the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis. It is expected that the Departments will act in a similar fashion in enforcing the Affordable Care Act requirements. Throughout the process of developing these interim final regulations, to the extent feasible within the specific preemption provisions of HIPAA as it applies to the Affordable Care Act, the Departments have attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide uniform minimum protections to consumers in every State. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to these interim final regulations, the Departments certify that the Employee Benefits Security Administration and the Centers for Medicare & Medicaid Services have complied with the requirements of Executive Order 13132 for the attached regulations in a meaningful and timely manner.

V. Recommended Preventive Services as of July 14, 2010

The materials that follow list recommended preventive services, current as of July 14, 2010, that will have to be covered without cost-sharing when delivered by an in-network provider. In many cases, the recommendations or guidelines went into effect before September 23, 2009; therefore the recommended services must be covered under these interim final regulations in plan years (in the individual market, policy years) that begin on or after September 23, 2010. However, there are some services that appear in the figure that are based on recommendations or guidelines that went into effect at some point later than September 23, 2009. Those services do not have to be covered under these interim final regulations until plan years (in the individual market, policy years) that begin at some point later than September 23, 2010. In addition, there are a few recommendations and guidelines that went into effect after September 23, 2009 and are not included in the figure. In both cases, information at *http://www.HealthCare.gov/center/regulations/prevention.html* specifically identifies those services and the relevant dates. The materials at *http://www.HealthCare.gov/center/regulations/prevention.html* will be updated on an ongoing basis, and will contain the most current recommended preventive services.

A. Recommendations of the United States Preventive Services Task Force (Task Force)

Recommendations of the Task Force appear in a chart that follows. This chart includes a description of the topic, the text of the Task Force recommendation, the grade the recommendation received (A or B), and the date that the recommendation went into effect.

B. Recommendations of the Advisory Committee On Immunization Practices (Advisory Committee) That Have Been Adopted by the Director of the Centers for Disease Control and Prevention

Recommendations of the Advisory Committee appear in four immunization schedules that follow: A schedule for children age 0 to 6 years, a schedule for children age 7 to 18 years, a "catch-up" schedule for children, and a schedule for adults. Immunization schedules are issued every year, and the schedules that appear here are the 2010 schedules. The schedules contain graphics that provide information about the recommended age for vaccination, number of doses needed, interval between the doses, and (for adults) recommendations associated with particular health conditions. In addition to the graphics, the schedules contain detailed footnotes that provide further information on each immunization in the schedule.

C. Comprehensive Guidelines Supported by the Health Resources and Services Administration (HRSA) for Infants, Children, and Adolescents

Comprehensive guidelines for infants, children, and adolescents supported by HRSA appear in two charts that follow: The Periodicity Schedule of the Bright Futures Recommendations for Pediatric Preventive Health Care, and the Uniform Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.

BILLING CODE 4830–01–P; 4510–29–P; 4210–01–P

Grade A and B Recommendations of the United States Preventive Services Task Force - July 13, 2010

Topic	Text	Grade	Date In Effect
Screening for abdominal aortic aneurysm	The USPSTF recommends one-time screening for abdominal aortic aneurysm (AAA) by ultrasonography in men aged 65 to 75 who have ever smoked.	B	February 28, 2005
Counseling for alcohol misuse	The U.S. Preventive Services Task Force (USPSTF) recommends screening and behavioral counseling interventions to reduce alcohol misuse (go to Clinical Considerations) by adults, including pregnant women, in primary care settings.	B	April 30, 2004
Screening for anemia	The USPSTF recommends routine screening for iron deficiency anemia in asymptomatic pregnant women.	B	May 31, 2006
Aspirin to prevent CVD: men	The USPSTF recommends the use of aspirin for men age 45 to 79 years when the potential benefit due to a reduction in myocardial infarctions outweighs the potential harm due to an increase in gastrointestinal hemorrhage.	A	March 30, 2009
Aspirin to prevent CVD: women	The USPSTF recommends the use of aspirin for women age 55 to 79 years when the potential benefit of a reduction in ischemic strokes outweighs the potential harm of an increase in gastrointestinal hemorrhage.	A	March 30, 2009
Screening for bacteriuria	The USPSTF recommends screening for asymptomatic bacteriuria with urine culture for pregnant women at 12 to 16 weeks' gestation or at the first prenatal visit, if later.	A	July 31, 2008
Screening for blood pressure	The U.S. Preventive Services Task Force (USPSTF) recommends screening for high blood pressure in adults aged 18 and older.	A	December 31, 2007
Counseling for BRCA screening	The USPSTF recommends that women whose family history is associated with an increased risk for deleterious mutations in BRCA1 or BRCA2 genes be referred for genetic counseling and evaluation for BRCA testing.	B	September 30, 2005
Screening for breast cancer (mammography)	The USPSTF recommends screening mammography for women with or without clinical breast examination (CBE), every 1-2 years for women aged 40 and older.	B	September 30, 2002
Chemoprevention of breast cancer	The USPSTF recommends that clinicians discuss chemoprevention with women at high risk for breast cancer and at low risk for adverse effects of chemoprevention. Clinicians should inform patients of the potential benefits and harms of chemoprevention.	B	July 31, 2002
Counseling for breast feeding	The USPSTF recommends interventions during pregnancy and after birth to promote and support breastfeeding.	B	October 31, 2008
Screening for cervical cancer	The USPSTF strongly recommends screening for cervical cancer in women who have been sexually active and have a cervix.	B	January 31, 2003
Screening for chlamydial infection: non-pregnant women	The U.S. Preventive Services Task Force (USPSTF) recommends screening for chlamydial infection for all sexually active non-pregnant young women aged 24 and younger and for older non-pregnant women who are at increased risk.	A	June 30, 2007
Screening for chlamydial infection: pregnant women	The USPSTF recommends screening for chlamydial infection for all pregnant women aged 24 and younger and for older pregnant women who are at increased risk.	B	June 30, 2007

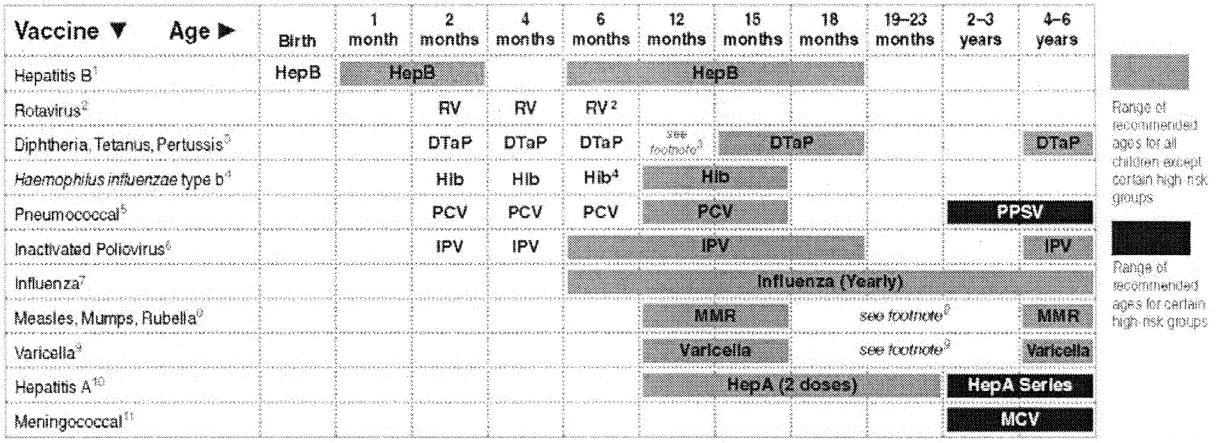
Screening for cholesterol abnormalities: men 35 and older	The U.S. Preventive Services Task Force (USPSTF) strongly recommends screening men aged 35 and older for lipid disorders.	A	June 30, 2008
Screening for cholesterol abnormalities: men younger than 35	The USPSTF recommends screening men aged 20 to 35 for lipid disorders if they are at increased risk for coronary heart disease.	B	June 30, 2008
Screening for cholesterol abnormalities: women 45 and older	The USPSTF strongly recommends screening women aged 45 and older for lipid disorders if they are at increased risk for coronary heart disease.	A	June 30, 2008
Screening for cholesterol abnormalities: women younger than 45	The USPSTF recommends screening women aged 20 to 45 for lipid disorders if they are at increased risk for coronary heart disease.	B	June 30, 2008
Screening for colorectal cancer	The USPSTF recommends screening for colorectal cancer (CRC) using fecal occult blood testing, sigmoidoscopy, or colonoscopy, in adults, beginning at age 50 years and continuing until age 75 years. The risks and benefits of these screening methods vary.	A	October 31, 2008
Chemoprevention of dental caries	The USPSTF recommends that primary care clinicians prescribe oral fluoride supplementation at currently recommended doses to preschool children older than 6 months of age whose primary water source is deficient in fluoride.	B	April 30, 2004
Screening for depression: adults	The USPSTF recommends screening adults for depression when staff-assisted depression care supports are in place to assure accurate diagnosis, effective treatment, and follow-up.	B	December 31, 2009, identical to a 2002 recommendation
Screening for depression: adolescents	The USPSTF recommends screening of adolescents (12-18 years of age) for major depressive disorder (MDD) when systems are in place to ensure accurate diagnosis, psychotherapy (cognitive-behavioral or interpersonal), and follow-up.	B	March 30, 2009
Screening for diabetes	The USPSTF recommends screening for type 2 diabetes in asymptomatic adults with sustained blood pressure (either treated or untreated) greater than 135/80 mm Hg.	B	June 30, 2008
Counseling for diet	The USPSTF recommends intensive behavioral dietary counseling for adult patients with hyperlipidemia and other known risk factors for cardiovascular and diet-related chronic disease. Intensive counseling can be delivered by primary care clinicians or by referral to other specialists, such as nutritionists or dietitians.	B	January 30, 2003
Supplementation with folic acid	The USPSTF recommends that all women planning or capable of pregnancy take a daily supplement containing 0.4 to 0.8 mg (400 to 800 µg) of folic acid.	A	May 31, 2009
Screening for gonorrhea: women	The U.S. Preventive Services Task Force (USPSTF) recommends that clinicians screen all sexually active women, including those who are pregnant, for gonorrhea infection if they are at increased risk for infection (that is, if they are young or have other individual or population risk factors; go to Clinical Considerations for further discussion of risk factors).	B	May 31, 2005
Prophylactic medication for gonorrhea: newborns	The USPSTF strongly recommends prophylactic ocular topical medication for all newborns against gonococcal ophthalmia neonatorum.	A	May 31, 2005

Screening for hearing loss	The USPSTF recommends screening for hearing loss in all newborn infants.	B	July 31, 2008
Screening for hemoglobinopathies	The U. S. Preventive Services Task Force (USPSTF) recommends screening for sickle cell disease in newborns.	A	September 30, 2007
Screening for hepatitis B	The U.S. Preventive Services Task Force (USPSTF) strongly recommends screening for hepatitis B virus (HBV) infection in pregnant women at their first prenatal visit.	A	June 30, 2009
Screening for HIV	The U.S. Preventive Services Task Force (USPSTF) strongly recommends that clinicians screen for human immunodeficiency virus (HIV) all adolescents and adults at increased risk for HIV infection (go to Clinical Considerations for discussion of risk factors).	A	July 31, 2005
Screening for congenital hypothyroidism	The USPSTF recommends screening for congenital hypothyroidism (CH) in newborns.	A	March 31, 2008
Iron supplementation in children	The U.S. Preventive Services Task Force (USPSTF) recommends routine iron supplementation for asymptomatic children aged 6 to 12 months who are at increased risk for iron deficiency anemia (go to Clinical Considerations for a discussion of increased risk).	B	May 30, 2006
Screening and counseling for obesity: adults	The USPSTF recommends that clinicians screen all adult patients for obesity and offer intensive counseling and behavioral interventions to promote sustained weight loss for obese adults.	B	December 31, 2003
Screening and counseling for obesity: children	The USPSTF recommends that clinicians screen children aged 6 years and older for obesity and offer them or refer them to comprehensive, intensive behavioral interventions to promote improvement in weight status.	B	January 31, 2010
Screening for osteoporosis	The U.S. Preventive Services Task Force (USPSTF) recommends that women aged 65 and older be screened routinely for osteoporosis. The USPSTF recommends that routine screening begin at age 60 for women at increased risk for osteoporotic fractures. (Go to Clinical Considerations for discussion of women at increased risk.)	B	September 30, 2002
Screening for PKU	The USPSTF recommends screening for phenylketonuria (PKU) in newborns.	A	March 31, 2008
Screening for Rh incompatibility:	The U.S. Preventive Services Task Force (USPSTF) strongly recommends Rh (D) blood typing and antibody testing for all pregnant women during their first visit for pregnancy-related care.	A	February 29, 2004
Screening for Rh incompatibility: 24-28 weeks gestation	The USPSTF recommends repeated Rh (D) antibody testing for all unsensitized Rh (D)-negative women at 24-28 weeks' gestation, unless the biological father is known to be Rh (D)-negative.	B	February 29, 2004
Counseling for STIs	The USPSTF recommends high-intensity behavioral counseling to prevent sexually transmitted infections (STIs) for all sexually active adolescents and for adults at increased risk for STIs.	B	October 31, 2008
Counseling for tobacco use: adults	The USPSTF recommends that clinicians ask all adults about tobacco use and provide tobacco cessation interventions for those who use tobacco products.	A	April 30, 2009
Counseling for tobacco use: pregnant women	The USPSTF recommends that clinicians ask all pregnant women about tobacco use and provide augmented, pregnancy-tailored counseling for those who smoke.	A	April 30, 2009

Screening for syphilis: non-pregnant persons	The U.S. Preventive Services Task Force (USPSTF) strongly recommends that clinicians screen persons at increased risk for syphilis infection.	A	July 31, 2004
Screening for syphilis: pregnant women	The USPSTF recommends that clinicians screen all pregnant women for syphilis infection.	A	July 31, 2004
Screening for visual acuity in children	The USPSTF recommends screening to detect amblyopia, strabismus, and defects in visual acuity in children younger than age 5 years.	B	May 31, 2004

Recommended Immunization Schedule for Persons Aged 0 Through 6 Years—United States • 2010

For those who fall behind or start late, see the catch-up schedule



This schedule includes recommendations in effect as of December 15, 2009. Any dose not administered at the recommended age should be administered at a subsequent visit, when indicated and feasible. The use of a combination vaccine generally is preferred over separate injections of its equivalent component vaccines. Considerations should include provider assessment, patient preference, and the potential for adverse events. Providers should consult the relevant Advisory Committee on Immunization Practices statement for detailed recommendations: **http://www.cdc.gov/vaccines/pubs/acip-list.htm**. Clinically significant adverse events that follow immunization should be reported to the Vaccine Adverse Event Reporting System (VAERS) at **http://www.vaers.hhs.gov** or by telephone, **800-822-7967**.

1. **Hepatitis B vaccine (HepB).** (Minimum age: birth)
   At birth:
   - Administer monovalent HepB to all newborns before hospital discharge.
   - If mother is hepatitis B surface antigen (HBsAg)-positive, administer HepB and 0.5 mL of hepatitis B immune globulin (HBIG) within 12 hours of birth.
   - If mother's HBsAg status is unknown, administer HepB within 12 hours of birth. Determine mother's HBsAg status as soon as possible and, if HBsAg-positive, administer HBIG (no later than age 1 week).

   After the birth dose:
   - The HepB series should be completed with either monovalent HepB or a combination vaccine containing HepB. The second dose should be administered at age 1 or 2 months. Monovalent HepB vaccine should be used for doses administered before age 6 weeks. The final dose should be administered no earlier than age 24 weeks.
   - Infants born to HBsAg-positive mothers should be tested for HBsAg and antibody to HBsAg 1 to 2 months after completion of at least 3 doses of the HepB series, at age 9 through 18 months (generally at the next well-child visit).
   - Administration of 4 doses of HepB to infants is permissible when a combination vaccine containing HepB is administered after the birth dose. The fourth dose should be administered no earlier than age 24 weeks.
2. **Rotavirus vaccine (RV).** (Minimum age: 6 weeks)
   - Administer the first dose at age 6 through 14 weeks (maximum age: 14 weeks 6 days). Vaccination should not be initiated for infants aged 15 weeks 0 days or older.
   - The maximum age for the final dose in the series is 8 months 0 days
   - If Rotarix is administered at ages 2 and 4 months, a dose at 6 months is not indicated.
3. **Diphtheria and tetanus toxoids and acellular pertussis vaccine (DTaP).** (Minimum age: 6 weeks)
   - The fourth dose may be administered as early as age 12 months, provided at least 6 months have elapsed since the third dose.
   - Administer the final dose in the series at age 4 through 6 years.
4. ***Haemophilus influenzae* type b conjugate vaccine (Hib).** (Minimum age: 6 weeks)
   - If PRP-OMP (PedvaxHIB or Comvax [HepB-Hib]) is administered at ages 2 and 4 months, a dose at age 6 months is not indicated.
   - TriHiBit (DTaP/Hib) and Hiberix (PRP-T) should not be used for doses at ages 2, 4, or 6 months for the primary series but can be used as the final dose in children aged 12 months through 4 years.
5. **Pneumococcal vaccine.** (Minimum age: 6 weeks for pneumococcal conjugate vaccine [PCV]; 2 years for pneumococcal polysaccharide vaccine [PPSV])
   - PCV is recommended for all children aged younger than 5 years. Administer 1 dose of PCV to all healthy children aged 24 through 59 months who are not completely vaccinated for their age.
   - Administer PPSV 2 or more months after last dose of PCV to children aged 2 years or older with certain underlying medical conditions, including a cochlear implant. See *MMWR* 1997;46(No. RR-8).
6. **Inactivated poliovirus vaccine (IPV)** (Minimum age: 6 weeks)
   - The final dose in the series should be administered on or after the fourth birthday and at least 6 months following the previous dose.
   - If 4 doses are administered prior to age 4 years a fifth dose should be administered at age 4 through 6 years. See *MMWR* 2009;58(30):829–30.
7. **Influenza vaccine (seasonal).** (Minimum age: 6 months for trivalent inactivated influenza vaccine [TIV]; 2 years for live, attenuated influenza vaccine [LAIV])
   - Administer annually to children aged 6 months through 18 years.
   - For healthy children aged 2 through 6 years (i.e., those who do not have underlying medical conditions that predispose them to influenza complications), either LAIV or TIV may be used, except LAIV should not be given to children aged 2 through 4 years who have had wheezing in the past 12 months.
   - Children receiving TIV should receive 0.25 mL if aged 6 through 35 months or 0.5 mL if aged 3 years or older.
   - Administer 2 doses (separated by at least 4 weeks) to children aged younger than 9 years who are receiving influenza vaccine for the first time or who were vaccinated for the first time during the previous influenza season but only received 1 dose.
   - For recommendations for use of influenza A (H1N1) 2009 monovalent vaccine see *MMWR* 2009;58(No. RR-10).
8. **Measles, mumps, and rubella vaccine (MMR).** (Minimum age: 12 months)
   - Administer the second dose routinely at age 4 through 6 years. However, the second dose may be administered before age 4, provided at least 28 days have elapsed since the first dose.
9. **Varicella vaccine.** (Minimum age: 12 months)
   - Administer the second dose routinely at age 4 through 6 years. However, the second dose may be administered before age 4, provided at least 3 months have elapsed since the first dose.
   - For children aged 12 months through 12 years the minimum interval between doses is 3 months. However, if the second dose was administered at least 28 days after the first dose, it can be accepted as valid.
10. **Hepatitis A vaccine (HepA).** (Minimum age: 12 months)
    - Administer to all children aged 1 year (i.e., aged 12 through 23 months). Administer 2 doses at least 6 months apart.
    - Children not fully vaccinated by age 2 years can be vaccinated at subsequent visits
    - HepA also is recommended for older children who live in areas where vaccination programs target older children, who are at increased risk for infection, or for whom immunity against hepatitis A is desired.
11. **Meningococcal vaccine.** (Minimum age: 2 years for meningococcal conjugate vaccine [MCV4] and for meningococcal polysaccharide vaccine [MPSV4])
    - Administer MCV4 to children aged 2 through 10 years with persistent complement component deficiency, anatomic or functional asplenia, and certain other conditions placing them at high risk.
    - Administer MCV4 to children previously vaccinated with MCV4 or MPSV4 after 3 years if first dose administered at age 2 through 6 years. See *MMWR* 2009;58:1042–3.

The Recommended Immunization Schedules for Persons Aged 0 through 18 Years are approved by the Advisory Committee on Immunization Practices (**http://www.cdc.gov/vaccines/recs/acip**), the American Academy of Pediatrics (**http://www.aap.org**), and the American Academy of Family Physicians (**http://www.aafp.org**).

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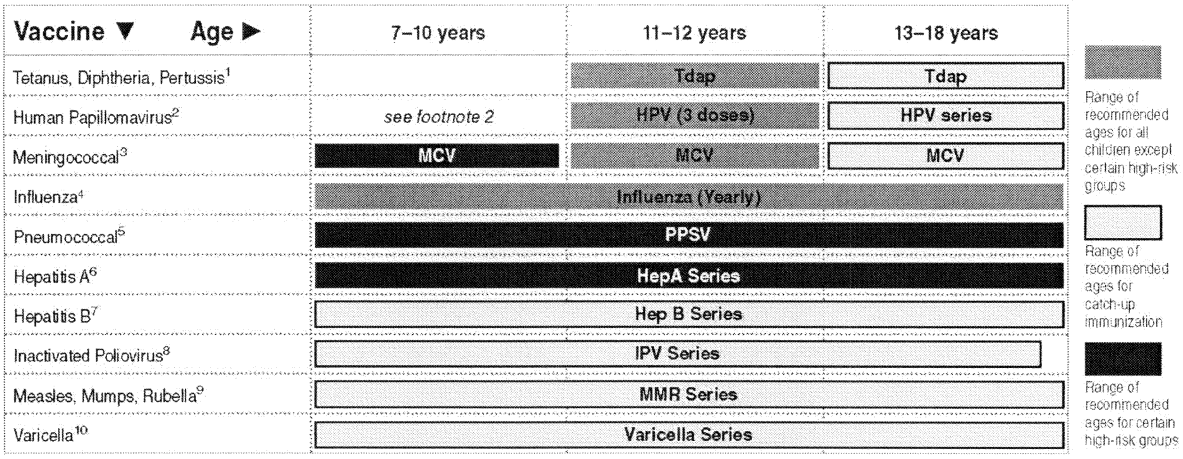
Recommended Immunization Schedule for Persons Aged 7 Through 18 Years—United States • 2010

For those who fall behind or start late, see the schedule below and the catch-up schedule



This schedule includes recommendations in effect as of December 15, 2009. Any dose not administered at the recommended age should be administered at a subsequent visit, when indicated and feasible. The use of a combination vaccine generally is preferred over separate injections of its equivalent component vaccines. Considerations should include provider assessment, patient preference, and the potential for adverse events. Providers should consult the relevant Advisory Committee on Immunization Practices statement for detailed recommendations: **http://www.cdc.gov/vaccines/pubs/acip-list.htm**. Clinically significant adverse events that follow immunization should be reported to the Vaccine Adverse Event Reporting System (VAERS) at **http://www.vaers.hhs.gov** or by telephone, **800-822-7967**.

1. **Tetanus and diphtheria toxoids and acellular pertussis vaccine (Tdap).** (Minimum age: 10 years for Boostrix and 11 years for Adacel)
   - Administer at age 11 or 12 years for those who have completed the recommended childhood DTP/DTaP vaccination series and have not received a tetanus and diphtheria toxoid (Td) booster dose.
   - Persons aged 13 through 18 years who have not received Tdap should receive a dose.
   - A 5-year interval from the last Td dose is encouraged when Tdap is used as a booster dose; however, a shorter interval may be used if pertussis immunity is needed.
2. **Human papillomavirus vaccine (HPV).** (Minimum age: 9 years)
   - Two HPV vaccines are licensed: a quadrivalent vaccine (HPV4) for the prevention of cervical, vaginal and vulvar cancers (in females) and genital warts (in females and males), and a bivalent vaccine (HPV2) for the prevention of cervical cancers in females.
   - HPV vaccines are most effective for both males and females when given before exposure to HPV through sexual contact.
   - HPV4 or HPV2 is recommended for the prevention of cervical precancers and cancers in females.
   - HPV4 is recommended for the prevention of cervical, vaginal and vulvar precancers and cancers and genital warts in females.
   - Administer the first dose to females at age 11 or 12 years.
   - Administer the second dose 1 to 2 months after the first dose and the third dose 6 months after the first dose (at least 24 weeks after the first dose).
   - Administer the series to females at age 13 through 18 years if not previously vaccinated.
   - HPV4 may be administered in a 3-dose series to males aged 9 through 18 years to reduce their likelihood of acquiring genital warts.
3. **Meningococcal conjugate vaccine (MCV4).**
   - Administer at age 11 or 12 years, or at age 13 through 18 years if not previously vaccinated.
   - Administer to previously unvaccinated college freshmen living in a dormitory.
   - Administer MCV4 to children aged 2 through 10 years with persistent complement component deficiency, anatomic or functional asplenia, or certain other conditions placing them at high risk.
   - Administer to children previously vaccinated with MCV4 or MPSV4 who remain at increased risk after 3 years (if first dose administered at age 2 through 6 years) or after 5 years (if first dose administered at age 7 years or older). Persons whose only risk factor is living in on-campus housing are not recommended to receive an additional dose. See *MMWR* 2009;58:1042–3.
4. **Influenza vaccine (seasonal).**
   - Administer annually to children aged 6 months through 18 years.
   - For healthy nonpregnant persons aged 7 through 18 years (i.e., those who do not have underlying medical conditions that predispose them to influenza complications), either LAIV or TIV may be used.
   - Administer 2 doses (separated by at least 4 weeks) to children aged younger than 9 years who are receiving influenza vaccine for the first time or who were vaccinated for the first time during the previous influenza season but only received 1 dose.
   - For recommendations for use of influenza A (H1N1) 2009 monovalent vaccine, See *MMWR* 2009;58(No. RR-10).
5. **Pneumococcal polysaccharide vaccine (PPSV).**
   - Administer to children with certain underlying medical conditions, including a cochlear implant. A single revaccination should be administered after 5 years to children with functional or anatomic asplenia or an immunocompromising condition. See *MMWR* 1997;46(No. RR-8).
6. **Hepatitis A vaccine (HepA).**
   - Administer 2 doses at least 6 months apart.
   - HepA is recommended for children aged older than 23 months who live in areas where vaccination programs target older children, who are at increased risk for infection, or for whom immunity against hepatitis A is desired.
7. **Hepatitis B vaccine (HepB).**
   - Administer the 3-dose series to those not previously vaccinated.
   - A 2-dose series (separated by at least 4 months) of adult formulation Recombivax HB is licensed for children aged 11 through 15 years.
8. **Inactivated poliovirus vaccine (IPV).**
   - The final dose in the series should be administered on or after the fourth birthday and at least 6 months following the previous dose.
   - If both OPV and IPV were administered as part of a series, a total of 4 doses should be administered, regardless of the child's current age.
9. **Measles, mumps, and rubella vaccine (MMR).**
   - If not previously vaccinated, administer 2 doses or the second dose for those who have received only 1 dose, with at least 28 days between doses.
10. **Varicella vaccine.**
    - For persons aged 7 through 18 years without evidence of immunity (see *MMWR* 2007;56[No. RR-4]), administer 2 doses if not previously vaccinated or the second dose if only 1 dose has been administered.
    - For persons aged 7 through 12 years, the minimum interval between doses is 3 months. However, if the second dose was administered at least 28 days after the first dose, it can be accepted as valid.
    - For persons aged 13 years and older, the minimum interval between doses is 28 days.

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The Recommended Immunization Schedules for Persons Aged 0 through 18 Years are approved by the Advisory Committee on Immunization Practices (**http://www.cdc.gov/vaccines/recs/acip**), the American Academy of Pediatrics (**http://www.aap.org**), and the American Academy of Family Physicians (**http://www.aafp.org**).

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Catch-up Immunization Schedule for Persons Aged 4 Months Through 18 Years Who Start Late or Who Are More Than 1 Month Behind—United States • 2010

The table below provides catch-up schedules and minimum intervals between doses for children whose vaccinations have been delayed. A vaccine series does not need to be restarted, regardless of the time that has elapsed between doses. Use the section appropriate for the child's age.

Vaccine	Minimum Age for Dose 1	Minimum Interval Between Doses			
		Dose 1 to Dose 2	Dose 2 to Dose 3	Dose 3 to Dose 4	Dose 4 to Dose 5
PERSONS AGED 4 MONTHS THROUGH 6 YEARS					
Hepatitis B[1]	Birth	4 weeks	8 weeks (and at least 16 weeks after first dose)		
Rotavirus[2]	6 wks	4 weeks	4 weeks[2]		
Diphtheria, Tetanus, Pertussis[3]	6 wks	4 weeks	4 weeks	6 months	6 months[3]
Haemophilus influenzae type b[4]	6 wks	4 weeks if first dose administered at younger than age 12 months 8 weeks (as final dose) if first dose administered at age 12–14 months No further doses needed if first dose administered at age 15 months or older	4 weeks[4] if current age is younger than 12 months 8 weeks (as final dose)[4] if current age is 12 months or older and first dose administered at younger than age 12 months and second dose administered at younger than 15 months No further doses needed if previous dose administered at age 15 months or older	8 weeks (as final dose) This dose only necessary for children aged 12 months through 59 months who received 3 doses before age 12 months	
Pneumococcal[5]	6 wks	4 weeks if first dose administered at younger than age 12 months 8 weeks (as final dose for healthy children) if first dose administered at age 12 months or older or current age 24 through 59 months No further doses needed for healthy children if first dose administered at age 24 months or older	4 weeks if current age is younger than 12 months 8 weeks (as final dose for healthy children) if current age is 12 months or older No further doses needed for healthy children if previous dose administered at age 24 months or older	8 weeks (as final dose) This dose only necessary for children aged 12 months through 59 months who received 3 doses before age 12 months or for high-risk children who received 3 doses at any age	
Inactivated Poliovirus[6]	6 wks	4 weeks	4 weeks	6 months	
Measles, Mumps, Rubella[7]	12 mos	4 weeks			
Varicella[8]	12 mos	3 months			
Hepatitis A[9]	12 mos	6 months			
PERSONS AGED 7 THROUGH 18 YEARS					
Tetanus, Diphtheria/ Tetanus, Diphtheria, Pertussis[10]	7 yrs[10]	4 weeks	4 weeks if first dose administered at younger than age 12 months 6 months if first dose administered at 12 months or older	6 months if first dose administered at younger than age 12 months	
Human Papillomavirus[11]	9 yrs	Routine dosing intervals are recommended[11]			
Hepatitis A[9]	12 mos	6 months			
Hepatitis B[1]	Birth	4 weeks	8 weeks (and at least 16 weeks after first dose)		
Inactivated Poliovirus[6]	6 wks	4 weeks	4 weeks	6 months	
Measles, Mumps, Rubella[7]	12 mos	4 weeks			
Varicella[8]	12 mos	3 months if person is younger than age 13 years 4 weeks if person is aged 13 years or older			

1. **Hepatitis B vaccine (HepB).**
   - Administer the 3-dose series to those not previously vaccinated.
   - A 2-dose series (separated by at least 4 months) of adult formulation Recombivax HB is licensed for children aged 11 through 15 years.
2. **Rotavirus vaccine (RV).**
   - The maximum age for the first dose is 14 weeks 6 days. Vaccination should not be initiated for infants aged 15 weeks 0 days or older.
   - The maximum age for the final dose in the series is 8 months 0 days.
   - If Rotarix was administered for the first and second doses, a third dose is not indicated.
3. **Diphtheria and tetanus toxoids and acellular pertussis vaccine (DTaP).**
   - The fifth dose is not necessary if the fourth dose was administered at age 4 years or older.
4. ***Haemophilus influenzae* type b conjugate vaccine (Hib).**
   - Hib vaccine is not generally recommended for persons aged 5 years or older. No efficacy data are available on which to base a recommendation concerning use of Hib vaccine for older children and adults. However, studies suggest good immunogenicity in persons who have sickle cell disease, leukemia, or HIV infection, or who have had a splenectomy; administering 1 dose of Hib vaccine to these persons who have not previously received Hib vaccine is not contraindicated.
   - If the first 2 doses were PRP-OMP (PedvaxHIB or Comvax), and administered at age 11 months or younger, the third (and final) dose should be administered at age 12 through 15 months and at least 8 weeks after the second dose.
   - If the first dose was administered at age 7 through 11 months, administer the second dose at least 4 weeks later and a final dose at age 12 through 15 months.
5. **Pneumococcal vaccine.**
   - Administer 1 dose of pneumococcal conjugate vaccine (PCV) to all healthy children aged 24 through 59 months who have not received at least 1 dose of PCV on or after age 12 months.
   - For children aged 24 through 59 months with underlying medical conditions, administer 1 dose of PCV if 3 doses were received previously or administer 2 doses of PCV at least 8 weeks apart if fewer than 3 doses were received previously.
   - Administer pneumococcal polysaccharide vaccine (PPSV) to children aged 2 years or older with certain underlying medical conditions, including a cochlear implant, at least 8 weeks after the last dose of PCV. See *MMWR* 1997;46(No. RR-8).
6. **Inactivated poliovirus vaccine (IPV).**
   - The final dose in the series should be administered on or after the fourth birthday and at least 6 months following the previous dose.
   - A fourth dose is not necessary if the third dose was administered at age 4 years or older and at least 6 months following the previous dose.
   - In the first 6 months of life, minimum age and minimum intervals are only recommended if the person is at risk for imminent exposure to circulating poliovirus (i.e., travel to a polio-endemic region or during an outbreak).
7. **Measles, mumps, and rubella vaccine (MMR).**
   - Administer the second dose routinely at age 4 through 6 years. However, the second dose may be administered before age 4, provided at least 28 days have elapsed since the first dose.
   - If not previously vaccinated, administer 2 doses with at least 28 days between doses.
8. **Varicella vaccine.**
   - Administer the second dose routinely at age 4 through 6 years. However, the second dose may be administered before age 4, provided at least 3 months have elapsed since the first dose.
   - For persons aged 12 months through 12 years, the minimum interval between doses is 3 months. However, if the second dose was administered at least 28 days after the first dose, it can be accepted as valid.
   - For persons aged 13 years and older, the minimum interval between doses is 28 days.
9. **Hepatitis A vaccine (HepA).**
   - HepA is recommended for children aged older than 23 months who live in areas where vaccination programs target older children, who are at increased risk for infection, or for whom immunity against hepatitis A is desired.
10. **Tetanus and diphtheria toxoids vaccine (Td) and tetanus and diphtheria toxoids and acellular pertussis vaccine (Tdap).**
    - Doses of DTaP are counted as part of the Td/Tdap series
    - Tdap should be substituted for a single dose of Td in the catch-up series or as a booster for children aged 10 through 18 years; use Td for other doses.
11. **Human papillomavirus vaccine (HPV).**
    - Administer the series to females at age 13 through 18 years if not previously vaccinated.
    - Use recommended routine dosing intervals for series catch-up (i.e., the second and third doses should be administered at 1 to 2 and 6 months after the first dose). The minimum interval between the first and second doses is 4 weeks. The minimum interval between the second and third doses is 12 weeks, and the third dose should be administered at least 24 weeks after the first dose.

Information about reporting reactions after immunization is available online at **http://www.vaers.hhs.gov** or by telephone, **800-822-7967**. Suspected cases of vaccine-preventable diseases should be reported to the state or local health department. Additional information, including precautions and contraindications for immunization, is available from the National Center for Immunization and Respiratory Diseases at **http://www.cdc.gov/vaccines** or telephone, **800-CDC-INFO** (800-232-4636).

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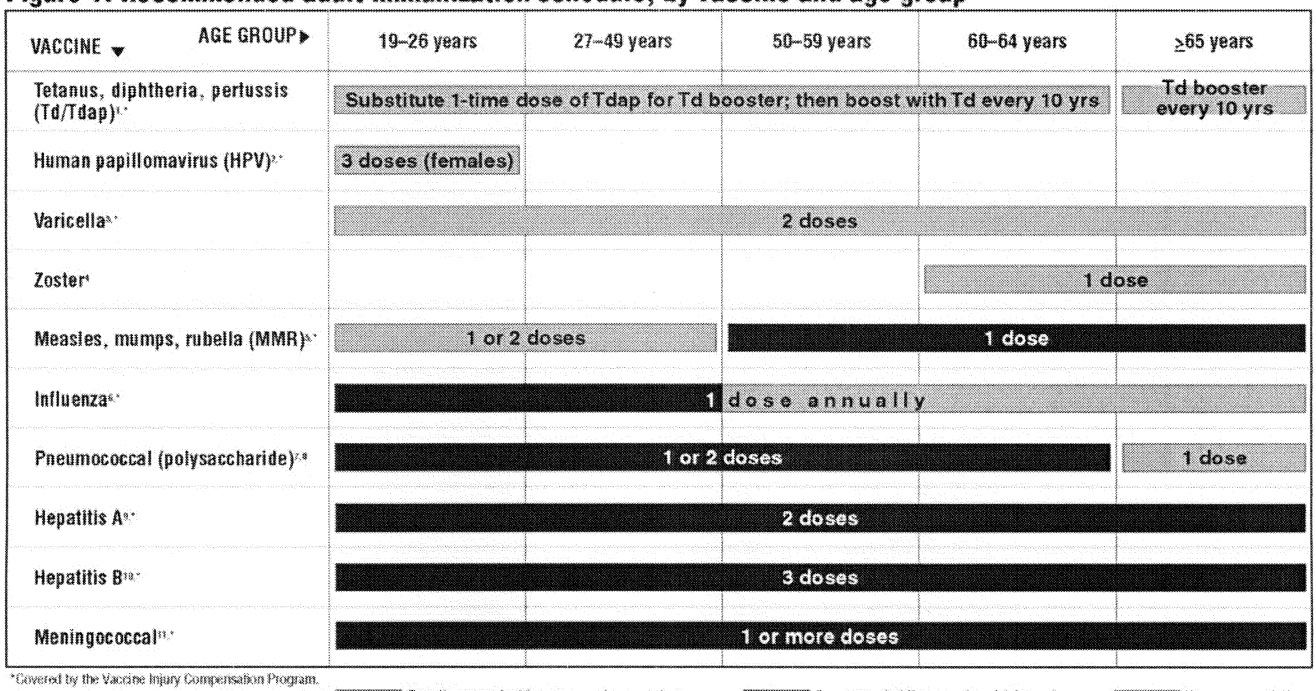
Recommended Adult Immunization Schedule
UNITED STATES · 2010

Note: These recommendations *must* be read with the footnotes that follow containing number of doses, intervals between doses, and other important information.

Figure 1. Recommended adult immunization schedule, by vaccine and age group



*Covered by the Vaccine Injury Compensation Program.

For all persons in this category who meet the age requirements and who lack evidence of immunity (e.g., lack documentation of vaccination or have no evidence of prior infection)

Recommended if some other risk factor is present (e.g., on the basis of medical, occupational, lifestyle, or other indications)

No recommendation

Report all clinically significant postvaccination reactions to the Vaccine Adverse Event Reporting System (VAERS). Reporting forms and instructions on filing a VAERS report are available at www.vaers.hhs.gov or by telephone, 800-822-7967.

Information on how to file a Vaccine Injury Compensation Program claim is available at www.hrsa.gov/vaccinecompensation or by telephone, 800-338-2382. To file a claim for vaccine injury, contact the U.S. Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005; telephone, 202-357-6400.

Additional information about the vaccines in this schedule, extent of available data, and contraindications for vaccination is also available at www.cdc.gov/vaccines or from the CDC-INFO Contact Center at 800-CDC-INFO (800-232-4636) in English and Spanish, 24 hours a day, 7 days a week.

Use of trade names and commercial sources is for identification only and does not imply endorsement by the U.S. Department of Health and Human Services.

CS216971-A

Figure 2. Vaccines that might be indicated for adults based on medical and other indications

VACCINE ▼ / INDICATION ▶	Pregnancy	Immunocompromising conditions (excluding human immunodeficiency virus [HIV])[1,2,3]	HIV infection[1,2,3,13] CD4+ T lymphocyte count <200 cells/μL	HIV infection[1,2,3,13] CD4+ T lymphocyte count ≥200 cells/μL	Diabetes, heart disease, chronic lung disease, chronic alcoholism	Asplenia[14] (including elective splenectomy and persistent complement component deficiencies)	Chronic liver disease	Kidney failure, end-stage renal disease, receipt of hemodialysis	Health-care personnel
Tetanus, diphtheria, pertussis (Td/Tdap)[1,2]	Td	Substitute 1-time dose of Tdap for Td booster; then boost with Td every 10 yrs							
Human papillomavirus (HPV)[2,4]	3 doses for females through age 26 yrs								
Varicella[3,5]	Contraindicated		2 doses						
Zoster[4]	Contraindicated		1 dose						
Measles, mumps, rubella (MMR)[3,6]	Contraindicated		1 or 2 doses						
Influenza[3,7]	1 dose TIV annually								1 dose TIV or LAIV annually
Pneumococcal (polysaccharide)[7,8]	1 or 2 doses								
Hepatitis A[9,10]	2 doses								
Hepatitis B[9,10]	3 doses								
Meningococcal[11,12]	1 or more doses								

*Covered by the Vaccine Injury Compensation Program.

For all persons in this category who meet the age requirements and who lack evidence of immunity (e.g., lack documentation of vaccination or have no evidence of prior infection)

Recommended if some other risk factor is present (e.g., on the basis of medical, occupational, lifestyle, or other indications)

No recommendation

These schedules indicate the recommended age groups and medical indications for which administration of currently licensed vaccines is commonly indicated for adults ages 19 years and older, as of January 1, 2010. Licensed combination vaccines may be used whenever any components of the combination are indicated and when the vaccine's other components are not contraindicated. For detailed recommendations on all vaccines, including those used primarily for travelers or that are issued during the year, consult the manufacturers' package inserts and the complete statements from the Advisory Committee on Immunization Practices (www.cdc.gov/vaccines/pubs/acip-list.htm)

The recommendations in this schedule were approved by the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP), the American Academy of Family Physicians (AAFP), the American College of Obstetricians and Gynecologists (ACOG), and the American College of Physicians (ACP).

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

Footnotes

Recommended Adult Immunization Schedule—UNITED STATES · 2010

For complete statements by the Advisory Committee on Immunization Practices (ACIP), visit www.cdc.gov/vaccines/pubs/ACIP-list.htm.

1. Tetanus, diphtheria, and acellular pertussis (Td/Tdap) vaccination

Tdap should replace a single dose of Td for adults aged 19 through 64 years who have not received a dose of Tdap previously.

Adults with uncertain or incomplete history of primary vaccination series with tetanus and diphtheria toxoid-containing vaccines should begin or complete a primary vaccination series. A primary series for adults is 3 doses of tetanus and diphtheria toxoid-containing vaccines; administer the first 2 doses at least 4 weeks apart and the third dose 6–12 months after the second; Tdap can substitute for any one of the doses of Td in the 3-dose primary series. The booster dose of tetanus and diphtheria toxoid-containing vaccine should be administered to adults who have completed a primary series and if the last vaccination was received ≥10 years previously. Tdap or Td vaccine may be used, as indicated.

If a woman is pregnant and received the last Td vaccination ≥10 years previously, administer Td during the second or third trimester. If the woman received the last Td vaccination <10 years previously, administer Tdap during the immediate postpartum period. A dose of Tdap is recommended for postpartum women, close contacts of infants aged <12 months, and all health-care personnel with direct patient contact if they have not previously received Tdap. An interval as short as 2 years from the last Td is suggested; shorter intervals can be used. Td may be deferred during pregnancy and Tdap substituted in the immediate postpartum period, or Tdap can be administered instead of Td to a pregnant woman.

Consult the ACIP statement for recommendations for giving Td as prophylaxis in wound management.

2. Human papillomavirus (HPV) vaccination

HPV vaccination is recommended at age 11 or 12 years with catch-up vaccination at ages 13 through 26 years.

Ideally, vaccine should be administered before potential exposure to HPV through sexual activity; however, females who are sexually active should still be vaccinated consistent with age-based recommendations. Sexually active females who have not been infected with any of the four HPV vaccine types (types 6, 11, 16, 18 all of which HPV4 prevents) or any of the two HPV vaccine types (types 16 and 18 both of which HPV2 prevents) receive the full benefit of the vaccination. Vaccination is less beneficial for females who have already been infected with one or more of the HPV vaccine types. HPV4 or HPV2 can be administered to persons with a history of genital warts, abnormal Papanicolaou test, or positive HPV DNA test, because these conditions are not evidence of prior infection with all vaccine HPV types.

HPV4 may be administered to males aged 9 through 26 years to reduce their likelihood of acquiring genital warts. HPV4 would be most effective when administered before exposure to HPV through sexual contact.

A complete series for either HPV4 or HPV2 consists of 3 doses. The second dose should be administered 1–2 months after the first dose; the third dose should be administered 6 months after the first dose.

Although HPV vaccination is not specifically recommended for persons with the medical indications described in Figure 2, "Vaccines that might be indicated for adults based on medical and other indications," it may be administered to these persons because the HPV vaccine is not a live-virus vaccine. However, the immune response and vaccine efficacy might be less for persons with the medical indications described in Figure 2 than in persons who do not have the medical indications described or who are immunocompetent. Health-care personnel are not at increased risk because of occupational exposure, and should be vaccinated consistent with age-based recommendations.

3. Varicella vaccination

All adults without evidence of immunity to varicella should receive 2 doses of single-antigen varicella vaccine if not previously vaccinated or the second dose if they have received only 1 dose, unless they have a medical contraindication. Special consideration should be given to those who 1) have close contact with persons at high risk for severe disease (e.g., health-care personnel and family contacts of persons with immunocompromising conditions) or 2) are at high risk for exposure or transmission (e.g., teachers; child-care employees; residents and staff members of institutional settings, including correctional institutions; college students; military personnel; adolescents and adults living in households with children; nonpregnant women of childbearing age; and international travelers).

Evidence of immunity to varicella in adults includes any of the following: 1) documentation of 2 doses of varicella vaccine at least 4 weeks apart; 2) U.S.-born before 1980 (although for health-care personnel and pregnant women, birth before 1980 should not be considered evidence of immunity); 3) history of varicella based on diagnosis or verification of varicella by a health-care provider (for a patient reporting a history of or presenting with an atypical case, a mild case, or both, health-care providers should seek either an epidemiologic link with a typical varicella case or to a laboratory-confirmed case or evidence of laboratory confirmation, if it was performed at the time of acute disease); 4) history of herpes zoster based on diagnosis or verification of herpes zoster by a health-care provider; or 5) laboratory evidence of immunity or laboratory confirmation of disease.

Pregnant women should be assessed for evidence of varicella immunity. Women who do not have evidence of immunity should receive the first dose of varicella vaccine upon completion or termination of pregnancy and before discharge from the health-care facility. The second dose should be administered 4–8 weeks after the first dose.

4. Herpes zoster vaccination

A single dose of zoster vaccine is recommended for adults aged ≥60 years regardless of whether they report a prior episode of herpes zoster. Persons with chronic medical conditions may be vaccinated unless their condition constitutes a contraindication.

5. Measles, mumps, rubella (MMR) vaccination

Adults born before 1957 generally are considered immune to measles and mumps.

Measles component: Adults born during or after 1957 should receive 1 or more doses of MMR vaccine unless they have 1) a medical contraindication; 2) documentation of vaccination with 1 or more doses of MMR vaccine; 3) laboratory evidence of immunity; or 4) documentation of physician-diagnosed measles.

A second dose of MMR vaccine, administered 4 weeks after the first dose, is recommended for adults who 1) have been recently exposed to measles or are in an outbreak setting; 2) have been vaccinated previously with killed measles vaccine; 3) have been vaccinated with an unknown type of measles vaccine during 1963–1967; 4) are students in postsecondary educational institutions; 5) work in a health-care facility; or 6) plan to travel internationally.

Mumps component: Adults born during or after 1957 should receive 1 dose of MMR vaccine unless they have 1) a medical contraindication; 2) documentation of vaccination with 1 or more doses of MMR vaccine; 3) laboratory evidence of immunity; or 4) documentation of physician-diagnosed mumps.

A second dose of MMR vaccine, administered 4 weeks after the first dose, is recommended for adults who 1) live in a community experiencing a mumps outbreak and are in an affected age group; 2) are students in postsecondary educational institutions; 3) work in a health-care facility; or 4) plan to travel internationally.

Rubella component: 1 dose of MMR vaccine is recommended for women who do not have documentation of rubella vaccination, or who lack laboratory evidence of immunity. For women of childbearing age, regardless of birth year, rubella immunity should be determined and women should be counseled regarding congenital rubella syndrome. Women who do not have evidence of immunity should receive MMR vaccine upon completion or termination of pregnancy and before discharge from the health-care facility.

Health-care personnel born before 1957: For unvaccinated health-care personnel born before 1957 who lack laboratory evidence of measles, mumps, and/or rubella immunity or laboratory confirmation of disease, health-care facilities should consider vaccinating personnel with 2 doses of MMR vaccine at the appropriate interval (for measles and mumps) and 1 dose of MMR vaccine (for rubella), respectively.

During outbreaks, health-care facilities should recommend that unvaccinated health-care personnel born before 1957, who lack laboratory evidence of measles, mumps, and/or rubella immunity or laboratory confirmation of disease, receive 2 doses of MMR vaccine during an outbreak of measles or mumps, and 1 dose during an outbreak of rubella.

Complete information about evidence of immunity is available at www.cdc.gov/vaccines/recs/provisional/default.htm.

6. Seasonal influenza vaccination

Vaccinate all persons aged ≥50 years and any younger persons who would like to decrease their risk of getting influenza. Vaccinate persons aged 19 through 49 years with any of the following indications.

Medical: Chronic disorders of the cardiovascular or pulmonary systems, including asthma; chronic metabolic diseases, including diabetes mellitus; renal or hepatic dysfunction, hemoglobinopathies, or immunocompromising conditions (including immunocompromising conditions caused by medications or HIV); cognitive, neurologic or neuromuscular disorders; and pregnancy during the influenza season. No data exist on the risk for severe or complicated influenza disease among persons with asplenia; however, influenza is a risk factor for secondary bacterial infections that can cause severe disease among persons with asplenia.

Occupational: All health-care personnel, including those employed by long-term care and assisted-living facilities, and caregivers of children aged <5 years.

Other: Residents of nursing homes and other long-term care and assisted-living facilities; persons likely to transmit influenza to persons at high risk (e.g., in-home household contacts and caregivers of children aged <5 years, persons aged ≥50 years, and persons of all ages with high-risk conditions).

Healthy, nonpregnant adults aged <50 years without high-risk medical conditions who are not contacts of severely immunocompromised persons in special-care units may receive either intranasally administered live, attenuated influenza vaccine (FluMist) or inactivated vaccine. Other persons should receive the inactivated vaccine.

7. Pneumococcal polysaccharide (PPSV) vaccination

Vaccinate all persons with the following indications.

Medical: Chronic lung disease (including asthma); chronic cardiovascular diseases; diabetes mellitus; chronic liver diseases, cirrhosis; chronic alcoholism; functional or anatomic asplenia (e.g., sickle cell disease or splenectomy [if elective splenectomy is planned, vaccinate at least 2 weeks before surgery]); immunocompromising conditions including chronic renal failure or nephrotic syndrome; and cochlear implants and cerebrospinal fluid leaks. Vaccinate as close to HIV diagnosis as possible.

Other: Residents of nursing homes or long-term care facilities and persons who smoke cigarettes. Routine use of PPSV is not recommended for American Indians/Alaska Natives or persons aged <65 years unless they have underlying medical conditions that are PPSV indications. However, public health authorities may consider recommending PPSV for American Indians/Alaska Natives and persons aged 50 through 64 years who are living in areas where the risk for invasive pneumococcal disease is increased.

8. Revaccination with PPSV

One-time revaccination after 5 years is recommended for persons with chronic renal failure or nephrotic syndrome; functional or anatomic asplenia (e.g., sickle cell disease or splenectomy); and for persons with immunocompromising conditions. For persons aged ≥65 years, one-time revaccination is recommended if they were vaccinated ≥5 years previously and were younger than aged <65 years at the time of primary vaccination.

9. Hepatitis A vaccination

Vaccinate persons with any of the following indications and any person seeking protection from hepatitis A virus (HAV) infection.

Behavioral: Men who have sex with men and persons who use injection drugs.

Occupational: Persons working with HAV–infected primates or with HAV in a research laboratory setting.

Medical: Persons with chronic liver disease and persons who receive clotting factor concentrates.

Other: Persons traveling to or working in countries that have high or intermediate endemicity of hepatitis A (a list of countries is available at wwwn.cdc.gov/travel/contentdiseases.aspx).

Unvaccinated persons who anticipate close personal contact (e.g., household contact or regular babysitting) with an international adoptee from a country of high or intermediate endemicity during the first 60 days after arrival of the adoptee in the United States should consider vaccination. The first dose of the 2-dose hepatitis A vaccine series should be administered as soon as adoption is planned, ideally ≥2 weeks before the arrival of the adoptee.

Single-antigen vaccine formulations should be administered in a 2-dose schedule at either 0 and 6–12 months (Havrix), or 0 and 6–18 months (Vaqta). If the combined hepatitis A and hepatitis B vaccine (Twinrix) is used, administer 3 doses at 0, 1, and 6 months; alternatively, a 4-dose schedule, administered on days 0, 7, and 21–30 followed by a booster dose at month 12 may be used.

10. Hepatitis B vaccination

Vaccinate persons with any of the following indications and any person seeking protection from hepatitis B virus (HBV) infection.

Behavioral: Sexually active persons who are not in a long-term, mutually monogamous relationship (e.g., persons with more than one sex partner during the previous 6 months); persons seeking evaluation or treatment for a sexually transmitted disease (STD); current or recent injection-drug users; and men who have sex with men.

Occupational: Health-care personnel and public-safety workers who are exposed to blood or other potentially infectious body fluids.

Medical: Persons with end-stage renal disease, including patients receiving hemodialysis; persons with HIV infection; and persons with chronic liver disease.

Other: Household contacts and sex partners of persons with chronic HBV infection; clients and staff members of institutions for persons with developmental disabilities; and international travelers to countries with high or intermediate prevalence of chronic HBV infection (a list of countries is available at wwwn.cdc.gov/travel/contentdiseases.aspx).

Hepatitis B vaccination is recommended for all adults in the following settings: STD treatment facilities; HIV testing and treatment facilities; facilities providing drug-abuse treatment and prevention services; health-care settings targeting services to injection-drug users or men who have sex with men; correctional facilities; end-stage renal disease programs and facilities for chronic hemodialysis patients; and institutions and nonresidential daycare facilities for persons with developmental disabilities.

Administer or complete a 3-dose series of HepB to those persons not previously vaccinated. The second dose should be administered 1 month after the first dose; the third dose should be administered at least 2 months after the second dose (and at least 4 months after the first dose). If the combined hepatitis A and hepatitis B vaccine (Twinrix) is used, administer 3 doses at 0, 1, and 6 months; alternatively, a 4-dose schedule, administered on days 0, 7, and 21–30 followed by a booster dose at month 12 may be used.

Adult patients receiving hemodialysis or with other immunocompromising conditions should receive 1 dose of 40 μg/mL (Recombivax HB) administered on a 3-dose schedule or 2 doses of 20 μg/mL (Engerix-B) administered simultaneously on a 4-dose schedule at 0, 1, 2 and 6 months.

11. Meningococcal vaccination

Meningococcal vaccine should be administered to persons with the following indications.

Medical: Adults with anatomic or functional asplenia, or persistent complement component deficiencies.

Other: First year college students living in dormitories; microbiologists routinely exposed to isolates of *Neisseria meningitidis*; military recruits; and persons who travel to or live in countries in which meningococcal disease is hyperendemic or epidemic (e.g., the "meningitis belt" of sub-Saharan Africa during the dry season [December through June]), particularly if their contact with local populations will be prolonged. Vaccination is required by the government of Saudi Arabia for all travelers to Mecca during the annual Hajj.

Meningococcal conjugate vaccine (MCV4) is preferred for adults with any of the preceding indications who are aged ≤55 years; meningococcal polysaccharide vaccine (MPSV4) is preferred for adults aged ≥56 years. Revaccination with MCV4 after 5 years is recommended for adults previously vaccinated with MCV4 or MPSV4 who remain at increased risk for infection (e.g., adults with anatomic or functional asplenia). Persons whose only risk factor is living in on-campus housing are not recommended to receive an additional dose.

12. Selected conditions for which *Haemophilus influenzae* type b (Hib) vaccine may be used

Hib vaccine generally is not recommended for persons aged ≥5 years. No efficacy data are available on which to base a recommendation concerning use of Hib vaccine for older children and adults. However, studies suggest good immunogenicity in patients who have sickle cell disease, leukemia, or HIV infection or who have had a splenectomy. Administering 1 dose of Hib vaccine to these high-risk persons who have not previously received Hib vaccine is not contraindicated.

13. Immunocompromising conditions

Inactivated vaccines generally are acceptable (e.g., pneumococcal, meningococcal, influenza [inactivated influenza vaccine]) and live vaccines generally are avoided in persons with immune deficiencies or immunocompromising conditions. Information on specific conditions is available at *www.cdc.gov/Vaccines/pubs/acip-list.htm*.

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN™

Recommendations for Preventive Pediatric Health Care

Bright Futures/American Academy of Pediatrics

Bright Futures. prevention and health promotion for infants, children, adolescents, and their families™

Each child and family is unique; therefore, these **Recommendations for Preventive Pediatric Health Care** are designed for the care of children who are receiving competent parenting, have no manifestations of any important health problems, and are growing and developing in satisfactory fashion. **Additional visits may become necessary** if circumstances suggest variations from normal.

Developmental, psychosocial, and chronic disease issues for children and adolescents may require frequent counseling and treatment visits separate from preventive care visits.

These guidelines represent a consensus by the American Academy of Pediatrics (AAP) and Bright Futures. The AAP continues to emphasize the great importance of **continuity of care** in comprehensive health supervision and the need to avoid **fragmentation of care.**

The recommendations in this statement do not indicate an exclusive course of treatment or standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

	INFANCY								EARLY CHILDHOOD							MIDDLE CHILDHOOD						ADOLESCENCE										
AGE[1]	PRENATAL[2]	NEWBORN[3]	3-5 d[4]	By 1 mo	2 mo	4 mo	6 mo	9 mo	12 m	15 mo	18 mo	24 mo	30 mo	3 y	4 y	5 y	6 y	7 y	8 y	9 y	10 y	11 y	12 y	13 y	14 y	15 y	16 y	17 y	18 y	19 y	20 y	21 y
HISTORY																																
Initial/Interval	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
MEASUREMENTS																																
Length/Height and Weight		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Head Circumference		•	•	•	•	•	•	•	•	•	•	•																				
Weight for Length		•	•	•	•	•	•	•	•	•	•																					
Body Mass Index												•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Blood Pressure[5]		★	★	★	★	★	★	★	★	★	★	★	★	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
SENSORY SCREENING																																
Vision		★	★	★	★	★	★	★	★	★	★	★	★	•[6]	•	•	•	★	•	★	•	★	•	★	★	•	★	★	•	★	★	★
Hearing		•[7]	★	★	★	★	★	★	★	★	★	★	★	★	•	•	•	★	•	★	•	★	★	★	★	★	★	★	★	★	★	★
DEVELOPMENTAL/BEHAVIORAL ASSESSMENT																																
Developmental Screening[8]								•			•		•																			
Autism Screening[9]											•	•																				
Developmental Surveillance[8]		•	•	•	•	•	•		•	•		•		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Psychosocial/Behavioral Assessment		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Alcohol and Drug Use Assessment																						★	★	★	★	★	★	★	★	★	★	★
PHYSICAL EXAMINATION[10]		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
PROCEDURES[11]																																
Newborn Metabolic/Hemoglobin Screening[12]		←	•	—	→																											
Immunization[13]		•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Hematocrit or Hemoglobin[14]						★			•		★	★		★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★
Lead Screening[15]							★	★	• or ★[16]		★	• or ★[16]		★	★	★	★															
Tuberculin Test[17]				★			★		★		★	★		★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★	★
Dyslipidemia Screening[18]												★			★		★		★		★	★	★	★	★	★	★	★	←	—	•	→
STI Screening[19]																						★	★	★	★	★	★	★	★	★	★	★
Cervical Dysplasia Screening[20]																						★	★	★	★	★	★	★	★	★	★	★
ORAL HEALTH[21]							★	★	• or ★[21]		• or ★[21]	• or ★[21]	• or ★[21]	•[22]			•[22]															
ANTICIPATORY GUIDANCE[23]	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•

1. If a child comes under care for the first time at any point on the schedule, or if any items are not accomplished at the suggested age, the schedule should be brought up to date at the earliest possible time.
2. A prenatal visit is recommended for parents who are at high risk, for first-time parents, and for those who request a conference. The prenatal visit should include anticipatory guidance, pertinent medical history, and a discussion of benefits of breastfeeding and planned method of feeding per AAP statement "The Prenatal Visit" (2001) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;107/6/1456].
3. Every infant should have a newborn evaluation after birth, breastfeeding encouraged, and instruction and support offered.
4. Every infant should have an evaluation within 3 to 5 days of birth and within 48 to 72 hours after discharge from the hospital, to include evaluation for feeding and jaundice. Breastfeeding infants should receive formal breastfeeding evaluation, encouragement, and instruction as recommended in AAP statement "Breastfeeding and the Use of Human Milk" (2005) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;115/2/496]. For newborns discharged in less than 48 hours after delivery, the infant must be examined within 48 hours of discharge per AAP statement "Hospital Stay for Healthy Term Newborns" (2004) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;113/5/1434].
5. Blood pressure measurement in infants and children with specific risk conditions should be performed at visits before age 3 years.
6. If the patient is uncooperative, rescreen within 6 months per the AAP statement "Eye Examination in Infants, Children, and Young Adults by Pediatricians" (2007) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;111/4/902].
7. All newborns should be screened per AAP statement "Year 2000 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs" (2000) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;106/4/798]. Joint Committee on Infant Hearing. Year 2007 position statement: principles and guidelines for early hearing detection and intervention programs. *Pediatrics*. 2007;120:898–921.
8. AAP Council on Children With Disabilities, AAP Section on Developmental Behavioral Pediatrics, AAP Bright Futures Steering Committee, AAP Medical Home Initiatives for Children With Special Needs Project Advisory Committee. Identifying infants and young children with developmental disorders in the medical home: an algorithm for developmental surveillance and screening. *Pediatrics*. 2006;118:405–420 [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;118/1/405].
9. Gupta VB, Hyman SL, Johnson CP, et al. Identifying children with autism early? *Pediatrics*. 2007;119:152–153 [URL: http://pediatrics.aappublications.org/cgi/content/full/119/1/152].
10. At each visit, age-appropriate physical examination is essential, with infant totally unclothed, older child undressed and suitably draped.
11. These may be modified, depending on entry point into schedule and individual need.
12. Newborn metabolic and hemoglobinopathy screening should be done according to state law. Results should be reviewed at visits and appropriate retesting or referral done as needed.
13. Schedules per the Committee on Infectious Diseases, published annually in the January issue of *Pediatrics*. Every visit should be an opportunity to update and complete a child's immunizations.
14. See AAP *Pediatric Nutrition Handbook*, 5th Edition (2003) for a discussion of universal and selective screening options. See also Recommendations to prevent and control iron deficiency in the United States. *MMWR*. 1998;47(RR-3):1–36.
15. For children at risk of lead exposure, consult the AAP statement "Lead Exposure in Children: Prevention, Detection, and Management" (2005) [URL: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;116/4/1036]. Additionally, screening should be done in accordance with state law where applicable.
16. Perform risk assessments or screens as appropriate, based on universal screening requirements for patients with Medicaid or high prevalence areas.
17. Tuberculosis testing per recommendations of the Committee on Infectious Diseases, published in the current edition of *Red Book: Report of the Committee on Infectious Diseases*. Testing should be done on recognition of high-risk factors.
18. "Third Report of the National Cholesterol Education Program (NCEP) Expert Panel on Detection, Evaluation, and Treatment of High Blood Cholesterol in Adults (Adult Treatment Panel III) Final Report" (2002) [URL: http://circ.ahajournals.org/cgi/content/full/106/25/3143] and "The Expert Committee Recommendations on the Assessment, Prevention, and Treatment of Child and Adolescent Overweight and Obesity." Supplement to *Pediatrics*. In press.
19. All sexually active patients should be screened for sexually transmitted infections (STIs).
20. All sexually active girls should have screening for cervical dysplasia as part of a pelvic examination beginning within 3 years of onset of sexual activity or age 21 (whichever comes first).
21. Referral to dental home, if available. Otherwise, administer oral health risk assessment. If the primary water source is deficient in fluoride, consider oral fluoride supplementation.
22. At the visits for 3 years and 6 years of age, it should be determined whether the patient has a dental home. If the patient does not have a dental home, a referral should be made to one. If the primary water source is deficient in fluoride, consider oral fluoride supplementation.
23. Refer to the specific guidance by age as listed in Bright Futures Guidelines. (Hagan JF, Shaw JS, Duncan PM, eds. *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents*. 3rd ed. Elk Grove Village, IL: American Academy of Pediatrics; 2008.)

KEY

• = to be performed ★ = risk assessment to be performed, with appropriate action to follow, if positive ←•→ = range during which a service may be provided, with the symbol indicating the preferred age

SACHDNC Recommended Uniform Screening Panel[1]
CORE[2] CONDITIONS[3]
(as of February 2010)

ACMG Code	Core Condition	Metabolic Disorder			Endocrine Disorder	Hemoglobin Disorder	Other Disorder
		Organic acid condition	Fatty acid oxidation disorders	Amino acid disorders			
PROP	Propionic academia	■					
MUT	Methylmalonic acidemia (methylmalonyl-CoA mutase)	■					
Cbl A,B	Methylmalonic acidemia (cobalamin disorders)	■					
IVA	Isovaleric acidemia	■					
3-MCC	3-Methylcrotonyl-CoA carboxylase deficiency	■					
HMG	3-Hydroxy-3-methyglutaric aciduria	■					
MCD	Holocarboxylase synthase deficiency	■					
ßKT	ß-Ketothiolase deficiency	■					
GA1	Glutaric acidemia type I	■					
CUD	Carnitine uptake defect/carnitine transport defect		■				
MCAD	Medium-chain acyl-CoA dehydrogenase deficiency		■				
VLCAD	Very long-chain acyl-CoA dehydrogenase deficiency		■				
LCHAD	Long-chain L-3 hydroxyacyl-CoA dehydrogenase deficiency		■				
TFP	Trifunctional protein deficiency		■				
ASA	Argininosuccinic aciduria			■			
CIT	Citrullinemia, type I			■			
MSUD	Maple syrup urine disease			■			
HCY	Homocystinuria			■			
PKU	Classic phenylketonuria			■			
TYR I	Tyrosinemia, type I			■			
CH	Primary congenital hypothyroidism				■		
CAH	Congenital adrenal hyperplasia				■		
Hb SS	S,S disease (Sickle cell anemia)					■	
Hb S/ßTh	S, βeta-thalassemia					■	
Hb S/C	S,C disease					■	
BIOT	Biotinidase deficiency						■
GALT	Classic galactosemia						■
SCID	Severe Combined Immunodeficiences						■
CF	Cystic fibrosis						■
HEAR	Hearing loss						■

1. The selection of these conditions is based on the report "Newborn Screening: Towards a Uniform Screening Panel and System. Genet Med. 2006; 8(5) Suppl: S12-S252" as authored by the American College of Medical Genetics (ACMG) and commissioned by the Health Resources and Services Administration (HRSA).
2. Disorders that should be included in every Newborn Screening Program
3. The Nomenclature for Conditions is based on the report "Naming and Counting Disorders (Conditions) Included in Newborn Screening Panels" Pediatrics 2006; 117 (5) Suppl: S308-S314

SACHDNC Recommended Uniform Screening Panel[1]
SECONDARY[2] CONDITIONS[3]
(as of February 2010)

ACMG Code	Secondary Condition	Metabolic Disorder			Hemoglobin Disorder	Other Disorder
		Organic acid condition	Fatty acid oxidation disorders	Amino acid disorders		
Cbl C,D	Methylmalonic acidemia with homocystinuria					
MAL	Malonic acidemia					
IBG	Isobutyrylglycinuria					
2MBG	2-Methylbutyrylglycinuria					
3MGA	3-Methylglutaconic aciduria					
2M3HBA	2-Methyl-3-hydroxybutyric aciduria					
SCAD	Short-chain acyl-CoA dehydrogenase deficiency					
M/SCHAD	Medium/short-chain L-3-hydroxyacl-CoA dehydrogenase deficiency					
GA2	Glutaric acidemia type II					
MCAT	Medium-chain ketoacyl-CoA thiolase deficiency					
DE RED	2,4 Dienoyl-CoA reductase deficiency					
CPT IA	Carnitine palmitoyltransferase type I deficiency					
CPT II	Carnitine palmitoyltransferase type II deficiency					
CACT	Carnitine acylcarnitine translocase deficiency					
ARG	Argininemia					
CIT II	Citrullinemia, type II					
MET	Hypermethioninemia					
H-PHE	Benign hyperphenylalaninemia					
BIOPT (BS)	Biopterin defect in cofactor biosynthesis					
BIOPT (REG)	Biopterin defect in cofactor regeneration					
TYR II	Tyrosinemia, type II					
TRY III	Tyrosinemia, type III					
Var Hb	Various other hemoglobinopathies					
GALE	Galactoepimerase deficiency					
GALK	Galactokinase deficiency					
	T-cell related lymphocyte deficiencies					

1. The selection of these conditions is based on the report "Newborn Screening: Towards a Uniform Screening Panel and System. Genet Med. 2006; 8(5) Suppl: S12-S252" as authored by the American College of Medical Genetics (ACMG) and commissioned by the Health Resources and Services Administration (HRSA).

2. Disorders that can be detected in the differential diagnosis of a core disorder

3. The Nomenclature for Conditions is based on the report "Naming and Counting Disorders (Conditions) Included in Newborn Screening Panels" Pediatrics 2006; 117 (5) Suppl: S308-S314

BILLING CODE 4830–01–C; 4510–29–C; 4210–01–C

VI. Statutory Authority

The Department of the Treasury temporary regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor interim final regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

The Department of Health and Human Services interim final regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 USC 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: July 8, 2010

Michael F. Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

Signed this 9th day of July, 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: July 9, 2010

Jay Angoff,

Director, Office of Consumer Information and Insurance Oversight.

Dated: July 9, 2010.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Chapter 1

■ Accordingly, 26 CFR Part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding an entry for § 54.9815–2713T in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 54.9815–2713T also issued under 26 U.S.C. 9833. * * *

■ **Par. 2.** Section 54.9815–2713T is added to read as follows:

§ 54.9815–2713T Coverage of preventive health services (temporary).

(a) *Services*—(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services:

(i) Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual involved (except as otherwise provided in paragraph (c) of this section);

(ii) Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved (for this purpose, a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention);

(iii) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration; and

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration.

(2) *Office visits*—(i) If an item or service described in paragraph (a)(1) of this section is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(ii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit.

(iii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of such an item or service, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(iv) The rules of this paragraph (a)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider. While visiting the provider, the individual is screened for cholesterol abnormalities, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit and for the laboratory work of the cholesterol screening test.

(ii) *Conclusion.* In this *Example 1,* the plan may not impose any cost-sharing requirements with respect to the separately-

billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the plan may impose cost-sharing requirements for the office visit.

Example 2. (i) *Facts.* Same facts as *Example 1.* As the result of the screening, the individual is diagnosed with hyperlipidemia and is prescribed a course of treatment that is not included in the recommendations under paragraph (a)(1) of this section.

(ii) *Conclusion.* In this *Example 2,* because the treatment is not included in the recommendations under paragraph (a)(1) of this section, the plan is not prohibited from imposing cost-sharing requirements with respect to the treatment.

Example 3. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider to discuss recurring abdominal pain. During the visit, the individual has a blood pressure screening, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 3,* the blood pressure screening is provided as part of an office visit for which the primary purpose was not to deliver items or services described in paragraph (a)(1) of this section. Therefore, the plan may impose a cost-sharing requirement for the office visit charge.

Example 4. (i) *Facts.* A child covered by a group health plan visits an in-network pediatrician to receive an annual physical exam described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. During the office visit, the child receives additional items and services that are not described in the comprehensive guidelines supported by the Health Resources and Services Administration, nor otherwise described in paragraph (a)(1) of this section. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 4,* the service was not billed as a separate charge and was billed as part of an office visit. Moreover, the primary purpose for the visit was to deliver items and services described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. Therefore, the plan may not impose a cost-sharing requirement with respect to the office visit.

(3) *Out-of-network providers.* Nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider. Moreover, nothing in this section precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

(4) *Reasonable medical management.* Nothing prevents a plan or issuer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in paragraph (a)(1) of this section to the extent not specified in the recommendation or guideline.

(5) *Services not described.* Nothing in this section prohibits a plan or issuer from providing coverage for items and services in addition to those recommended by the United States Preventive Services Task Force or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, or provided for by guidelines supported by the Health Resources and Services Administration, or from denying coverage for items and services that are not recommended by that task force or that advisory committee, or under those guidelines. A plan or issuer may impose cost-sharing requirements for a treatment not described in paragraph (a)(1) of this section, even if the treatment results from an item or service described in paragraph (a)(1) of this section.

(b) *Timing*—(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years that begin on or after September 23, 2010, or, if later, for plan years that begin on or after the date that is one year after the date the recommendation or guideline is issued.

(2) *Changes in recommendations or guidelines.* A plan or issuer is not required under this section to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section after the recommendation or guideline is no longer described in paragraph (a)(1) of this section. Other requirements of Federal or State law may apply in connection with a plan or issuer ceasing to provide coverage for any such items or services, including PHS Act section 2715(d)(4), which requires a plan or issuer to give 60 days advance notice to an enrollee before any material modification will become effective.

(c) *Recommendations not current.* For purposes of paragraph (a)(1)(i) of this section, and for purposes of any other provision of law, recommendations of the United States Preventive Services Task Force regarding breast cancer screening, mammography, and prevention issued in or around November 2009 are not considered to be current.

(d) *Effective/applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010. *See* § 54.9815–1251T for determining the application of this section to grandfathered health plans (providing that these rules regarding coverage of preventive health services do not apply to grandfathered health plans).

(e) *Expiration date.* This section expires on *July 12, 2013* or on such earlier date as may be provided in final regulations or other action published in the **Federal Register.**

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

■ 29 CFR Part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority citation for Part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor's Order 6–2009, 74 FR 21524 (May 7, 2009).

Subpart C—Other Requirements

■ 2. Section 2590.715–2713 is added to subpart C to read as follows:

§ 2590.715–2713 Coverage of preventive health services.

(a) *Services*—(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services:

(i) Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual involved (except as otherwise provided in paragraph (c) of this section);

(ii) Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved (for this purpose, a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been

adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention);

(iii) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration; and

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration.

(2) *Office visits*—(i) If an item or service described in paragraph (a)(1) of this section is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(ii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit.

(iii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of such an item or service, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(iv) The rules of this paragraph (a)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider. While visiting the provider, the individual is screened for cholesterol abnormalities, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit and for the laboratory work of the cholesterol screening test.

(ii) *Conclusion.* In this *Example 1,* the plan may not impose any cost-sharing requirements with respect to the separately-billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the plan may impose cost-sharing requirements for the office visit.

Example 2. (i) *Facts.* Same facts as *Example 1.* As the result of the screening, the individual is diagnosed with hyperlipidemia and is prescribed a course of treatment that is not included in the recommendations under paragraph (a)(1) of this section.

(ii) *Conclusion.* In this *Example 2,* because the treatment is not included in the recommendations under paragraph (a)(1) of this section, the plan is not prohibited from imposing cost-sharing requirements with respect to the treatment.

Example 3. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider to discuss recurring abdominal pain. During the visit, the individual has a blood pressure screening, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 3,* the blood pressure screening is provided as part of an office visit for which the primary purpose was not to deliver items or services described in paragraph (a)(1) of this section. Therefore, the plan may impose a cost-sharing requirement for the office visit charge.

Example 4. (i) *Facts.* A child covered by a group health plan visits an in-network pediatrician to receive an annual physical exam described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. During the office visit, the child receives additional items and services that are not described in the comprehensive guidelines supported by the Health Resources and Services Administration, nor otherwise described in paragraph (a)(1) of this section. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 4,* the service was not billed as a separate charge and was billed as part of an office visit. Moreover, the primary purpose for the visit was to deliver items and services described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. Therefore, the plan may not impose a cost-sharing requirement with respect to the office visit.

(3) *Out-of-network providers.* Nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider. Moreover, nothing in this section precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

(4) *Reasonable medical management.* Nothing prevents a plan or issuer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in paragraph (a)(1) of this section to the extent not specified in the recommendation or guideline.

(5) *Services not described.* Nothing in this section prohibits a plan or issuer from providing coverage for items and services in addition to those recommended by the United States Preventive Services Task Force or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, or provided for by guidelines supported by the Health Resources and Services Administration, or from denying coverage for items and services that are not recommended by that task force or that advisory committee, or under those guidelines. A plan or issuer may impose cost-sharing requirements for a treatment not described in paragraph (a)(1) of this section, even if the treatment results from an item or service described in paragraph (a)(1) of this section.

(b) *Timing*—(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years that begin on or after September 23, 2010, or, if later, for plan years that begin on or after the date that is one year after the date the recommendation or guideline is issued.

(2) *Changes in recommendations or guidelines.* A plan or issuer is not required under this section to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section after the recommendation or guideline is no longer described in paragraph (a)(1) of this section. Other requirements of Federal or State law may apply in connection with a plan or issuer ceasing to provide coverage for any such items or services, including PHS Act section 2715(d)(4), which requires a plan or issuer to give 60 days advance notice to an enrollee before any material modification will become effective.

(c) *Recommendations not current.* For purposes of paragraph (a)(1)(i) of this section, and for purposes of any other provision of law, recommendations of the United States Preventive Services Task Force regarding breast cancer screening, mammography, and prevention issued in or around November 2009 are not considered to be current.

(d) *Applicability date.* The provisions of this section apply for plan years beginning on or after September 23, 2010. *See* § 2590.715–1251 of this Part for determining the application of this section to grandfathered health plans (providing that these rules regarding coverage of preventive health services do not apply to grandfathered health plans).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A

■ For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147, added May 13, 2010, at 75 FR 27138, effective July 12, 2010, as follows:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Sections 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Add § 147.130 to read as follows:

§ 147.130 Coverage of preventive health services.

(a) *Services*—(1) *In general.* Beginning at the time described in paragraph (b) of this section, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services:

(i) Evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual involved (except as otherwise provided in paragraph (c) of this section);

(ii) Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved (for this purpose, a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention);

(iii) With respect to infants, children, and adolescents, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration; and

(iv) With respect to women, to the extent not described in paragraph (a)(1)(i) of this section, evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by the Health Resources and Services Administration.

(2) *Office visits*—(i) If an item or service described in paragraph (a)(1) of this section is billed separately (or is tracked as individual encounter data separately) from an office visit, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(ii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is the delivery of such an item or service, then a plan or issuer may not impose cost-sharing requirements with respect to the office visit.

(iii) If an item or service described in paragraph (a)(1) of this section is not billed separately (or is not tracked as individual encounter data separately) from an office visit and the primary purpose of the office visit is not the delivery of such an item or service, then a plan or issuer may impose cost-sharing requirements with respect to the office visit.

(iv) The rules of this paragraph (a)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider. While visiting the provider, the individual is screened for cholesterol abnormalities, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit and for the laboratory work of the cholesterol screening test.

(ii) *Conclusion.* In this *Example 1,* the plan may not impose any cost-sharing requirements with respect to the separately-billed laboratory work of the cholesterol screening test. Because the office visit is billed separately from the cholesterol screening test, the plan may impose cost-sharing requirements for the office visit.

Example 2. (i) *Facts.* Same facts as *Example 1.* As the result of the screening, the individual is diagnosed with hyperlipidemia and is prescribed a course of treatment that is not included in the recommendations under paragraph (a)(1) of this section.

(ii) *Conclusion.* In this *Example 2,* because the treatment is not included in the recommendations under paragraph (a)(1) of this section, the plan is not prohibited from imposing cost-sharing requirements with respect to the treatment.

Example 3. (i) *Facts.* An individual covered by a group health plan visits an in-network health care provider to discuss recurring abdominal pain. During the visit, the individual has a blood pressure screening, which has in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force with respect to the individual. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 3,* the blood pressure screening is provided as part of an office visit for which the primary purpose was not to deliver items or services described in paragraph (a)(1) of this section. Therefore, the plan may impose a cost-sharing requirement for the office visit charge.

Example 4. (i) *Facts.* A child covered by a group health plan visits an in-network pediatrician to receive an annual physical exam described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. During the office visit, the child receives additional items and services that are not described in the comprehensive guidelines supported by the Health Resources and Services Administration, nor otherwise described in paragraph (a)(1) of this section. The provider bills the plan for an office visit.

(ii) *Conclusion.* In this *Example 4,* the service was not billed as a separate charge and was billed as part of an office visit. Moreover, the primary purpose for the visit was to deliver items and services described as part of the comprehensive guidelines supported by the Health Resources and Services Administration. Therefore, the plan may not impose a cost-sharing requirement for the office visit charge.

(3) *Out-of-network providers.* Nothing in this section requires a plan or issuer that has a network of providers to provide benefits for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider. Moreover, nothing in this section precludes a plan or issuer that has a network of providers from imposing cost-sharing requirements for items or services described in paragraph (a)(1) of this section that are delivered by an out-of-network provider.

(4) *Reasonable medical management.* Nothing prevents a plan or issuer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for an item or service described in paragraph (a)(1) of this section to the extent not specified in the recommendation or guideline.

(5) *Services not described.* Nothing in this section prohibits a plan or issuer from providing coverage for items and services in addition to those recommended by the United States Preventive Services Task Force or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, or provided for by guidelines supported by the Health Resources and Services Administration, or from denying coverage for items and services that are not recommended by that task force or that advisory committee, or under those guidelines. A

plan or issuer may impose cost-sharing requirements for a treatment not described in paragraph (a)(1) of this section, even if the treatment results from an item or service described in paragraph (a)(1) of this section.

(b) *Timing*—(1) *In general.* A plan or issuer must provide coverage pursuant to paragraph (a)(1) of this section for plan years (in the individual market, policy years) that begin on or after September 23, 2010, or, if later, for plan years (in the individual market, policy years) that begin on or after the date that is one year after the date the recommendation or guideline is issued.

(2) *Changes in recommendations or guidelines.* A plan or issuer is not required under this section to provide coverage for any items and services specified in any recommendation or guideline described in paragraph (a)(1) of this section after the recommendation or guideline is no longer described in paragraph (a)(1) of this section. Other requirements of Federal or State law may apply in connection with a plan or issuer ceasing to provide coverage for any such items or services, including PHS Act section 2715(d)(4), which requires a plan or issuer to give 60 days advance notice to an enrollee before any material modification will become effective.

(c) *Recommendations not current.* For purposes of paragraph (a)(1)(i) of this section, and for purposes of any other provision of law, recommendations of the United States Preventive Services Task Force regarding breast cancer screening, mammography, and prevention issued in or around November 2009 are not considered to be current.

(d) *Applicability date.* The provisions of this section apply for plan years (in the individual market, for policy years) beginning on or after September 23, 2010. *See* § 147.140 of this Part for determining the application of this section to grandfathered health plans (providing that these rules regarding coverage of preventive health services do not apply to grandfathered health plans).

[FR Doc. 2010–17242 Filed 7–14–10; 11:15 am]

BILLING CODE 4830–01–P; 4510–29–P; 4210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0646]

RIN 1625–AA00

Safety Zone; Transformers 3 Movie Filming, Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago River near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the Chicago River due to the filming of a major motion picture. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the different types of stunts that will be performed during the filming of this movie.

DATES: *Effective Date:* this rule is effective in the CFR from July 19, 2010 until 9 p.m. on July 19, 2010. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on July 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0646 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0646 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414–747–7154 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to the fact that the application for this event was not submitted to our office in time to allow for publishing an NPRM. Based on the hazards associated with the filming of this major motion picture, delaying the publication of this rule to provide for a comment would be contrary to public interest as immediate action is necessary to protect the public.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest since immediate action is needed to protect the public and the event would be over by the time the 30 day period is completed.

Basis and Purpose

This temporary safety zone is necessary to protect vessels from the hazards associated with the filming of the major motion picture, Transformers 3. The combination of congested waterways and the filming of dangerous stunts taking place on or near the water pose serious risks of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the filming of this motion picture does pose significant risks to public safety and property and that a temporary safety zone is necessary.

Discussion of Rule

The safety zone will encompass all U.S. navigable waters of the Chicago River between the Michigan Avenue Bridge, 41°53′20″ N. 087°37′27″ W. and the North Columbus Drive Bascule Bridge, 41°53′19″ N. 087°37′13″ W. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chicago River between 7 a.m. and 9 p.m. daily from July 16 through July 19, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Traffic will only be prohibited from passing through the zone when actual filming is being conducted. Traffic will likely only be stopped for a short duration. The entity filming the stunts has represented to the Coast Guard that any given closure will last approximately ten minutes. Although the responsible entity can give definite times of the closures, all efforts will be made to open the waterway to vessel traffic when closure is not necessary.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her on scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction. An environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T10–0646 to read as follows:

§ 165.T10–0646 Safety Zone; Transformers 3 Movie Filming, Chicago River, Chicago, IL

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Chicago River between the Michigan Avenue Bridge, 41°53′20″ N., 087°37′27″ W. and the North Columbus Drive Bascule Bridge, 41°53′19″ N., 087°37′13″ W. [DATUM: NAD 83].

(b) *Enforcement period.* This regulation will be enforced between 7 a.m. and 9 p.m. daily from July 16 through July 19, 2010. The Captain of the Port, Sector Lake Michigan, or the on-scene representative may suspend and restart the enforcement of the safety zone during the effective period at any time.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the Chicago Marine Unit vessels that will be on-scene as the enforcement vessels.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: July 6, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–17470 Filed 7–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0601]

RIN 1625–AA00

Safety Zone; Annual Kennewick, WA, Columbia Unlimited Hydroplane Races, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Columbia River in Kennewick, Washington for the "Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races" also known as the Tri-City Water Follies Hydroplane Races. The safety zone is necessary to help ensure the safety of the participants as well as the maritime public and will do so by prohibiting all persons and vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 a.m. on July 23, 2010 until 7:30 p.m. on July 25, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0601 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0601 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do otherwise would be contrary to the public interest since the event would be over by the time notice could be published and comments taken.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do otherwise would be contrary to the public interest since immediate action is needed to protect the public and the event would be over by the time the 30 day period is completed.

Basis and Purpose

The Tri-City Water Follies Association hosts annual hydroplane races on the Columbia River in Kennewick, Washington. The Association is planning to hold the event one week prior to what is established in 33 CFR 100.1303. The Coast Guard does not intend to enforce 33 CFR 100.1303 in 2010, as the annual hydroplane races are being held on a different date as established in this rule. Due to the safety hazards inherent with such events, a safety zone is necessary to help ensure the safety of the participants as well as the maritime public.

Discussion of Rule

The safety zone created by this rule encompasses all waters bounded by two lines drawn from shore to shore on the Columbia River with the first line running between position 46°14′07″ N, 119°10′42″ W and position 46°13′42″ N, 119°10′51″ W and the second line running between position 46°13′35″ N, 119°07′34″ W and position 46°13′10″ N, 119°07′47″ W.

The safety zone will be enforced daily from 8:30 a.m. until approximately 7:30 p.m. on July 23, July 24, and July 25, 2010. All persons and vessels will be prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the safety zone will only be in effect for approximately 12 hours on three days and maritime traffic will be able to transit the safety zone at designated intervals throughout that time period and as otherwise authorized by the Captain of the Port or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone. The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zone will only be in effect for 12 hours on three days and maritime traffic will be able to transit the safety zone at designated intervals throughout that time period and as otherwise authorized by the Captain of the Port or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–150 to read as follows:

§ 165.T13–150 Safety Zone; Annual Kennewick, Washington, Columbia Unlimited Hydroplane Races, Kennewick, WA

(a) *Location.* The following area is a safety zone: All waters encompassed within the area bounded by two lines drawn from shore to shore on the Columbia River with the first line running between position 46°14′07″ N. 119°10′42″ W. and position 46°13′42″ N. 119°10′51″ W. and the second line running between position 46°13′35″ N. 119°07′34″ W. and position 46°13′10″ N. 119°07′47″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created by this section or bring, cause to be brought, or allow to remain in the safety zone created by this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. See 33 CFR Part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be enforced from 8:30 a.m. to 7:30 p.m. on July 23, July 24, and July 25, 2010.

Dated: June 25, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010–17472 Filed 7–16–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0552]

RIN 1625–AA00

Safety Zone; Mississippi River, Mile 840.0 to 839.8

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coat Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, Mile 840.0 to 839.8, extending the entire width of the river. This safety zone is needed to protect persons and vessels from safety hazards associated with a barge based firework display occurring on the Upper Mississippi River. Entry into this zone is be prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 11 a.m. until 4 p.m. on July 24, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0552 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0552 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Rob McCaskey, Sector Upper Mississippi River Response Department at telephone 314–269–2541, e-mail *Rob.E.McCaskey@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard finds that it would be impracticable to publish a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process could be completed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be impracticable because immediate action is needed to protect vessels and mariners from the safety hazards associated with a barged based fireworks display.

Basis and Purpose

On July 24, 2010 the Red Bull North America will be conducting a flying aircraft regatta at mile 839.9 on the Upper Mississippi River. This event presents safety hazards to the navigation of vessels between Mile 840.0 and Mile 839.8, extending the entire width of the river. A safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the fireworks. The Captain of the Port Upper Mississippi River will inform the public of all safety zone changes through broadcast notice to mariners.

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the Upper Mississippi River, Mile 840.0 to 839.8, extending the entire width of the river. Entry into this zone will be prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule will be effective from 11 a.m. until 4 p.m. on July 24, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because of the very brief duration of the effective period of the zone. Furthermore, the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Mississippi River, Mile 840.0 to 839.8, from 11 a.m. until 4 p.m. on July 24, 2010. This rule will not have a significant effect on a substantial number of small entities for the following reasons: (1) This rule will only be in effect for a limited period of time; and (2) the local waterway users will be notified via public Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

This rule involves an environmental analysis checklist and a categorical exclusion determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0552 to read as follows:

§ 165.T08–0552 Safety Zone; Upper Mississippi River, Mile 840.0 to 839.8.

(a) *Location.* The following area is a safety zone: all waters of the Upper Mississippi River, Mile 840.0 to 839.8 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 11 a.m. until 4 p.m. on July 24, 2010.

(c) *Periods of Enforcement.* This rule will be enforced from 11 a.m. until 4 p.m. on July 24, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at 314–269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 6, 2010.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2010–17474 Filed 7–16–10; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1147; MB Docket No. 10–63; RM–11597]

FM Table of Allotments, Amboy, California

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Sunnylands Broadcasting, LLC, allots FM Channel 284A at Amboy, California. Channel 284A can be allotted at Amboy, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 34–36–00 NL and 115–40–52 WL, with a site restriction of 7.5 km (4.6 miles) northeast of the community. Concurrence in the allotment by the Government of Mexico is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.–Mexican border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for Channel 284A at Amboy, California, is granted prior to receipt of formal concurrence by the Mexican government, the authorization will include the following condition: "Operation with the facilities specified herein for Amboy, California, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico–United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico." See Supplementary Information infra.

DATES: Effective August 18, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202)418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 10–63, adopted June 25, 2010, and released June 28, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's website, www.bcpiweb.com <http://www.bcpiweb.com/>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 284A to Amboy.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–17479 Filed 7–16–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 09–114; RM–11417; FCC 10–109]

Amendment of the Commission's Rules To Accommodate 30 Megahertz Channels in the 6525–6875 MHz Band; and To Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its rules governing terrestrial fixed wireless services in the Upper 6 GHz Band and the 23 GHz Band by providing wider bandwidths and conditional authorization. Allowing wider bandwidth channels in the Upper 6 GHz Band makes an additional source of spectrum for high-capacity microwave links more readily available. Expanding conditional authority in the 23 GHz Band will enable licensees to activate microwave links more quickly, including links involved in critical commercial, backhaul, and public safety applications.

DATES: Effective August 18, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Oliver or Stephen Buenzow, Wireless Telecommunications Bureau, Broadband Division, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–2487 (voice), (202) 418–7233 (TTY), or via the Internet to *Charles.Oliver@fcc.gov* or *Stephen.Buenzow@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (R&O),* FCC 10–109, adopted on June 7, 2010, and released on June 11, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or 1–800–378–3160, contact BCPI at its Web site: *http://www.bcpiweb.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10–109. The complete text of this document is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC 10–109A1.doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov*.

Summary:

I. Wider Bandwidths in the Upper Six Gigahertz Band

Background

1. Most of the part 101 Fixed Service 6 GHz Band is made up of two sub-bands, 5925–6425 MHz (Lower 6 GHz Band) and 6525–6875 MHz (Upper 6 GHz Band). The Commission licenses terrestrial Fixed Services (FS) in both sub-bands, but the technical rules related to the licensing for each sub-band are different. For FS applicants, the most important distinction is the maximum authorized bandwidth: 30 megahertz is the maximum bandwidth allowed in the Lower 6 GHz Band and 10 megahertz is the maximum allowed in the Upper 6 GHz Band.

2. The Lower 6 GHz Band is increasingly congested, partly because FS users can obtain wider bandwidths on those frequencies but also because other services are allowed to use the band. As of April 7, 2010, there were 15,936 active FS licenses in the Lower 6 GHz Band. Furthermore, as of March 31, 2010, the Lower 6 GHz Band had 1,641 licensed satellite earth stations. Through the frequency coordination process, and consistent with existing rules, each earth station is routinely cleared to use the entire 5925–6425 MHz band for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite on a limited set of channels. Thus, a satellite earth station has an extensive preclusive effect on the ability of subsequent applicants to coordinate stations in adjacent areas. By comparison, the typical terrestrial FS station is coordinated for a narrow beamwidth on a single channel or a limited set of channels.

3. The congestion in the Lower 6 GHz Band has led a number of FS applicants to file waiver requests seeking licenses to operate in the Upper 6 GHz Band on bandwidths that are greater than the 10 megahertz that is authorized by rule. As of April 7, 2010, the Commission had issued waivers authorizing 957 FS

frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 625 were authorized with 30 megahertz bandwidths. While the waiver process has provided an alternative for applicants seeking wider bandwidths in the Upper 6 GHz, some FS operators have argued that it has the disadvantages of delay and additional preparation costs.

4. Pursuant to § 101.103 of the Commission's rules, applicants for FS licenses are required to coordinate their proposed stations with incumbent licensees and contemporaneous applicants to ensure that they will not interfere with each other. Once that process is completed, the Commission's rules provide many applicants with conditional authority to begin service immediately, without waiting for final approval from the Commission, with the stipulation that they must take their stations down if the Commission later rejects their applications. Conditional authority is not available, however, to applicants that must request waivers of existing rules.

5. On February 4, 2008, Fixed Wireless Communications Coalition (FWCC) filed a petition proposing that the Commission change its rules to allow channels with 30 megahertz bandwidths in the Upper 6 GHz Band, a change that would extend the opportunity for fast-track, conditional authorizations to the Upper 6 GHz. On June 29, 2009, the Commission released a *Notice of Proposed Rulemaking (NPRM),* 74 FR 36134 (July 22, 2009), in which we proposed and sought comment on modifying the Commission's part 101 rules to provide fixed terrestrial wireless licensees with authority to use channels with wider bandwidths of as much as 30 megahertz in the Upper 6 GHz Band. We found that such action could serve the public interest by making more readily available an additional source of spectrum for high-capacity microwave links.

6. We conclude that the public interest would be served by authorizing 30 megahertz bandwidth channels in the Upper 6 GHz Band. Comments filed in response to the *NPRM* unanimously support authorizing 30 megahertz channels in the Upper 6 GHz band. We find such action could serve the public interest by making an additional source of spectrum for high-capacity microwave links more readily available. As FWCC states, such links support a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests seeking licenses for 30 megahertz channels (625 authorized paths as of April 7, 2010) is evidence of a notable demand for 30 megahertz channels in this band. We believe that allowing such channels without requiring applicants to seek a waiver would expedite the provision of service by allowing them to take advantage of conditional authority. Furthermore, all of the commenters agree that our existing rules and policies are sufficient to prevent congestion and speculative licensing.

7. As an added safeguard against congestion, we also adopt the *NPRM's* proposal that applicants for 30 megahertz channels on new facilities in the Upper 6 GHz Band be required to demonstrate that 30 megahertz channels in the Lower 6 GHz Band are unavailable. This condition is supported by FWCC, National Spectrum Management Association (NSMA), and AT&T, Inc. (AT&T). We decline, however, to require a showing that available channels in the 11 GHz band could not support the path lengths required by the applicant. As FWCC and NSMA point out, this requirement could be a burden for applicants that are already licensed to operate on the same paths in the 6 GHz band.

8. We decline to adopt the Tier One Converged Networks, Inc. and Cielo Networks, Inc. proposal that we also begin issuing licenses for bandwidths of 40 megahertz or more in the Upper 6 GHz Band. While, as noted above, we have received many waiver requests for 30 megahertz channels, we have not received any requests for waivers authorizing such bandwidths in the Upper 6 GHz Band. Furthermore, no commenter proposed a band plan that would accommodate 40 megahertz or wider channels. Finally, for shorter paths, we note that 40 and 50 megahertz channels are available in the 18 and 23 GHz bands. We may revisit this conclusion in the future if a more concrete showing of need for wider channels in the 6 GHz Band is made.

9. To implement these new rules, we also adopt the specific channel plan proposed in the *NPRM,* with the corrections noted by AT&T and FWCC, *i.e.,* 30 megahertz bandwidth paired channels (for 60 megahertz total for each authorized path) at 6555 and 6725 MHz, 6595 and 6755 MHz, 6625 and 6785 MHz, 6655 MHz and 6815 MHz, and 6685 MHz and 6845 MHz. AT&T and NSMA support this proposal, and no oher commenters propose any alternative channelization scheme.

II. Conditional Authority for Operation in the 23 Gigahertz Band

10. The Commission's rules provide for conditional authorization of fixed microwave links, allowing the license applicant to begin operating a link as soon as the application is filed, if the link has been frequency coordinated and certain other conditions are met. The frequencies in the 23 GHz band are shared by federal and non-federal users. For this reason, conditional authority in the band is limited to frequencies for which the Commission has an agreement with the National Telecommunications and Information Administration (NTIA) to permit conditional authorization. Thus, in the 23 GHz band, conditional authority is currently limited to four channel pairs—21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, and 21.975/23.175 GHz—for non-federal applicants proposing to limit their equivalent isotropically radiated power (EIRP) to 55 dBm.

11. On November 7, 2007, FWCC submitted a petition for rulemaking requesting that the Commission allow conditional licensing for non-federal use, with NTIA's consent, on two additional channel pairs in the 23 GHz band—the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs—for applicants proposing to limit their EIRP to 55 dBm. In the *NPRM,* we sought comment on whether to allow conditional authority on the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs for applicants proposing to limit their EIRP to 55 dBm. We stated that we had coordinated our proposal with NTIA and that our decision to seek comment on it was predicated on NTIA's lack of opposition. We noted further that the Commission has previously recognized that permitting conditional operation pending the approval of an application provides greater flexibility to part 101 licensees and enables them to operate more efficiently.

12. We adopt our proposal to allow conditional authority on two additional channel pairs in the 23 GHz band—the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs—for applicants proposing to limit their EIRP to 55 dBm. All of the commenting parties agree that increasing the availability of conditional licensing under those terms will provide significant benefits, by enabling applicants to activate short links more quickly. The only parties that are in any position to be injured by this decision are the federal agencies that are represented by NTIA. NTIA has consulted with them through its

Interdepartment Radio Advisory Committee and has concluded that they will suffer no adverse impact if we allow conditional authority on two additional channel pairs in the 23 GHz band, provided that such applicants limit their EIRP to 55 dBm, as FWCC proposes. For those reasons, we adopt the proposed rule.

III. Procedural Matters

A. Paperwork Reduction Analysis

13. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)* in WT Docket 09–114. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. In addition, the *Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register.**

A. Need for, and Objectives of, the Proposed Rules

In this *Report and Order,* we adopt two categories of changes to our part 101 rules involving fixed microwave stations. First, we amend our part 101 rules to permit coordination and licensing of 30 megahertz channels in the 6525–6875 MHz band (Upper 6 GHz Band) if the link cannot be accommodated in the 5925–6425 MHz band (Lower 6 GHz Band). Second, we allow conditional licensing on two additional channel pairs for non-federal use in the 23 GHz band, for applicants proposing to limit their effective isotropically radiated power (E.I.R.P.) to 55 dBm.

With respect to the first change, the Lower 6 GHz Band is increasingly congested, partly because FS users can obtain wider bandwidths but also because other services are allowed to use the band. As of April 7, 2010, there were 15,936 active FS licenses in the Lower 6 GHz Band. Furthermore, as of March 31, 2010, the Lower 6 GHz Band had 1,641 licensed satellite earth stations. Through the frequency coordination process, and consistent with existing rules, each earth station is routinely cleared to use the entire 5925–6425 MHz band for the entire geosynchronous arc, even if the earth station actually communicates with only one transponder on one satellite on a limited set of channels. Thus, a satellite earth station has an extensive preclusive effect on the ability of subsequent applicants to coordinate stations in adjacent areas. By comparison, the typical terrestrial FS station is coordinated for a narrow beamwidth on a single channel or a limited set of channel.

The congestion in the Lower 6 GHz Band has led a number of FS applicants to file waiver requests seeking licenses to operate in the Upper 6 GHz Band on bandwidths that are greater than the 10 megahertz that is authorized by rule. As of April 7, 2010, the Commission had issued waivers authorizing 957 FS frequency paths with bandwidths greater than 10 megahertz in the Upper 6 GHz Band, of which 625 were authorized with 30 megahertz bandwidths. These waivers were granted to applicants who demonstrated that there were no channels available in the Lower 6 GHz Band with comparable bandwidth, that other, higher frequency bands were not suitable for the proposed paths, and that there were no other alternatives. While the waiver process has provided an alternative for applicants seeking wider bandwidths in the Upper 6 GHz, some FS operators have argued that the waiver process has the disadvantages of delay and additional preparation costs.

Allowing channels with bandwidths of as much as 30 megahertz in the Upper 6 GHz Band by rule could meet a variety of needs. Such action could serve the public interest by making more readily available an additional source of spectrum for high-capacity microwave links, which are used for a variety of important commercial, public safety, and consumer uses, including backhaul for broadband systems. Furthermore, the high number of waiver requests seeking licenses for channels greater than 10 megahertz in the Upper 6 GHz Band is evidence of a notable demand for wider channels in that band. On the other hand, the American Petroleum Institute (API) had previously expressed concern that allowing 30 megahertz licenses in the Upper 6 GHz Band could cause congestion, encourage speculative licensing, and make it more difficult for licensees to relocate out of the 2 GHz Band that has been reallocated for advanced technologies. We conclude that the rules we have adopted can provide the benefits of wider channels while avoiding the potential problems noted by API. Specifically, we conclude that our existing minimum payload capacity and construction rules, as well as a requirement that 30 megahertz channels be requested in the Upper 6 GHz Band only if such channels are unavailable in the Lower 6 GHz Band, will prevent congestion and speculative licensing.

With respect to the adopted rules concerning the 23 GHz Band, the Commission's rules provide that, if certain conditions are met, applicants for FS licenses under part 101 may operate their proposed stations more quickly pursuant to conditional authority, although they do so at their own risk during the pendency of their applications. Before exercising conditional authority, the applicant must successfully complete frequency coordination to ensure that the proposed facilities will not cause interference to other authorized facilities. Conditional authority ceases immediately if an application is returned as unacceptable for filing. The Commission's rules also provide that "conditional authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises."

Wireless telecommunications in the fixed service bands support a variety of critical services such as public safety (including police and fire vehicle dispatch), coordination of railroad train movements, control of natural gas and oil pipelines, electric grid regulation, and backhaul for wireless traffic. Conditional authority allows an applicant to provide those types of services more expeditiously, without having to wait for the Commission to act on its application. Because the 23 GHz Band is shared by federal and non-federal users, conditional authority in that band is limited to frequencies for which the Commission has an agreement with NTIA to permit conditional authorization. NTIA has not stated any objection to allowing conditional licensing on the additional two channel pairs. We therefore amend our rules to add the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs to the list of frequencies on which we allow conditional authority. Such action will allow all licensees to provide service more rapidly (subject to the normal limitations on conditional authority noted above) while protecting existing licensees.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

Wireless Telecommunications Carriers (except satellite). Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the FRFA, we will use the SBA definition that applies to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior category definitions, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there were 11,927 firms operating that year. While the Census Bureau has not released data on such establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *Report and Order* imposes no new reporting or recordkeeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

As noted above, this *Report and Order* adopts rules to provide applicants with improved access to spectrum that is presently restricted with respect to bandwidth or that requires completion of frequency coordination with NTIA before the applicant can begin operations on a conditional basis. As noted above, the vast majority of microwave licensees under part 101 of the Commission's rules are considered small businesses. Under our rules, the opportunities to apply for 30 megahertz channels in the Upper 6 GHz Band and to take advantage of conditional authority for the 22.025/23.225 GHz and 22.075/23.275 GHz channel pairs will be equally available to all applicants, including small businesses. Thus, this action will provide additional options to all licensees, including small entity licensees. Such action will serve the public interest by facilitating the efficient use of the 6 GHz and 23 GHz bands. The rules could therefore open up economic opportunities to a variety of spectrum users, including small businesses.

The alternative approach would be to maintain the existing rules. If the rules were not changed to provide for 30 megahertz channels in the Upper 6 GHz Band, applicants who wished to obtain such channels would have to take additional time and money to prepare a request for waiver of the Commission's rules. Such additional time and expense may be particularly disadvantageous to small businesses. Furthermore, because a waiver request would be required, applicants cannot commence operation until the Commission grants their waiver request and application. The resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers. With respect to the 23 GHz Band, the alternative approach would be to deny conditional authority on the two additional channel pairs and require applicants to wait until the Commission grants their application before they can commence service. Again, the resulting delay can make it more difficult for applicants to meet their communications needs or the needs of their customers.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

IV. Ordering Clauses

14. Accordingly, it is ordered, pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this *Report and Order* is hereby adopted.

15. It is further ordered that part 101 of the Commission's rules is amended as set forth in the final rules, and that these rules shall be effective 30 days after publication in the **Federal Register**.

16. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 2. In § 101.31, revise paragraph (b)(1)(vii) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(vii) With respect to the 21.8–22.1 GHz and 23.0–23.3 GHz band, the filed application(s) does not propose to operate on a frequency pair centered on other than 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, 21.975/23.175 GHz, 22.025/23.225 GHz or 22.075/23.275 GHz and does not propose to operate with an E.I.R.P. greater than 55 dBm. The center frequencies are shifted from the center frequencies listed above for certain bandwidths as follows: add 0.005 GHz for 20 MHz bandwidth channels, add 0.010 GHz for 30 megahertz bandwidth channels, and subtract 0.005 GHz for 40 MHz bandwidth channels. *See* specific channel listings in § 101.147(s).

* * * * *

■ 3. In § 101.109(c), in the table revise the entry "6,525 to 6,875" to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	
6,525 to 6,875	30 MHz.[1]
* * * * *	

* * * * *

■ 4. Amend § 101.147 as follows:

■ a. Revise the entry "6,525–6,875 MHz (14)" to the list in paragraph (a);

■ b. Add note (33) to paragraph (a);

■ c. Add paragraph (l)(8); and

■ d. Revise the entries "22025" and "220075" to the table in paragraphs (s)(3) and (s)(7).

§ 101.147 Frequency Assignments.

* * * * *

(a) * * *

6,525–6.875 MHz (14) (33)

* * * * *

Notes

* * * * *

(33) The coordination of a new 30 megahertz link in the 6,525–6,875 MHz band should be attempted only if it cannot be accommodated in the 5,925–6,425 MHz band.

* * * * *

(l) * * *

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6555	6725
6595	6755
6625	6785
6655	6815
6685	6845

* * * * *

(s) * * *

Transmit (receive) (MHz)	Receive (transmit) (MHz)
(3) 10 MHz bandwidth channels:	
* * * * *	
22025[2]	[2]23225
* * * * *	
22075[2]	[2]23275
* * * * *	
* * * * *	

Transmit (receive) (MHz)	Receive (transmit) (MHz)
(7) 50 MHz bandwidth channels:	
* * * * *	
[2]22025	23225[2]
22075[2]	[2]23275
* * * * *	

[2] These frequencies may be assigned to low power systems, as defined in paragraph (8) of this section.

* * * * *

[FR Doc. 2010–17205 Filed 7–14–10; 4:15 pm]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 75, No. 137
Monday, July 19, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0322; Airspace Docket No. 10–ANE–105]

Establishment of Class E Airspace; Colebrook, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Colebrook, NH, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Special Standard Instrument Approach Procedure (SIAP) serving the Upper Valley Connecticut Hospital. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations in the National Airspace System.

DATES: 0901 UTC. Comments must be received on or before September 2, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0322; Airspace Docket No. 10–ANE–105, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0322; Airspace Docket No. 10–ANE–105) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0322; Airspace Docket No. 10–ANE–105." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Colebrook, NH to provide controlled airspace required to support the special SIAPs for Upper Connecticut Valley Hospital. The existing Class E airspace extending upward from 1,200 feet above the surface would be modified for the safety and management of IFR operations by lowering the base of the controlled airspace to 700 feet above the surface.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed

rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Upper Connecticut Valley Hospital, Colebrook, NH.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Colebrook, NH [New]

Upper Connecticut Valley Hospital, NH
(Lat. 44°54′14″ N., long. 71°28′52″ W.)
Point in Space Coordinates
(Lat. 44°54′26″ N., long. 71°29′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 44°54′26″ N., long. 71°29′54″ W.) serving the Upper Connecticut Valley Hospital.

Issued in College Park, Georgia on July 1, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–17520 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0615; Airspace Docket No. 10–ANM–5]

Proposed Amendment of Class E Airspace; Arco, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Arco, ID. Decommissioning of the Arco-Butte County Non-Directional Beacon (NDB) at Arco-Butte County Airport has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Arco-Butte County Airport. This action also would adjust the geographic coordinates of the airport.

DATES: Comments must be received on or before September 2, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0615; Airspace Docket No. 10–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0615 and Airspace Docket No. 10–ANM–5) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0615 and Airspace Docket No. 10–ANM–5". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at

Arco-Butte County Airport, Arco, ID. Airspace reconfiguration is necessary due to the decommissioning of the Arco-Butte County NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates of the airport also would be adjusted in accordance with the National Aeronautical Charting Office.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Arco-Butte County Airport, Arco, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR Part 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Arco, ID [Amended]

Arco-Butte County Airport, Arco, ID
(Lat. 43°36′13″ N., long. 113°20′03″ W.)
Pocatello VORTAC
(Lat. 42°52′13″ N., long. 112°39′08″ W.)
DuBois VORTAC
(Lat. 44°05′20″ N., long. 112°12′34″ W.)
Burley VOR/DME
(Lat. 42°34′49″ N., long. 113°51′57″ W.)

That airspace extending from 700 feet above the surface within a 7-mile radius of the Arco-Butte County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at 68.5 miles northwest of the Pocatello VORTAC on V–269, thence southeast along V–269 to 53 miles northwest of the Pocatello VORTAC on V–269, thence to 29 miles south of the DuBois VORTAC on V–257, thence south along V–257 to V–365, thence southeast along V–365 to the Burley VOR/DME, thence northwest along V–231 to 29 miles northwest of the Burley VOR/DME on V–231, to the point of beginning.

Issued in Seattle, Washington, on July 1, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17508 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1136; Airspace Docket No. 09–ANM–26]

Proposed Establishment and Modification of Class E Airspace; Deer Park, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E surface airspace and modify existing Class E airspace at Deer Park Airport, Deer Park, WA, to accommodate aircraft using the existing Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Deer Park Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before September 2, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1136; Airspace Docket No. 09–ANM–26, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA

2009–1136 and Airspace Docket No. 09–ANM–26) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1136 and Airspace Docket No. 09–ANM–26". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E surface airspace within a 4.1-mile radius of Deer Park Airport to accommodate existing RNAV (GPS) SIAPs at the airport. This action also would remove the Non-Directional Radio Beacon (NDB) from the legal description of the existing Class E airspace area extending upward from 700′ above the surface, as the NDB soon will be decommissioned. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Deer Park Airport, Deer Park, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Deer Park, WA [New]

Deer Park Airport, WA
(Lat. 47°58′01″ N., long. 117°25′43″ W.)

Within a 4.1-mile radius of Deer Park Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Deer Park, WA [Modified]

Deer Park Airport, WA
(Lat. 47°58′01″ N., long. 117°25′43″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Deer Park Airport, excluding the Spokane, WA, Class E airspace area.

Issued in Seattle, Washington, on July 1, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17516 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 16

RIN 3038–AC63

Account Ownership and Control Report

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking ("Notice").

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") hereby proposes to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges and other reporting entities. The information collected will enhance market transparency, increase the Commission's trade practice and market surveillance capabilities, leverage existing surveillance systems and data, and facilitate the Commission's enforcement and research programs. Upon adoption of a final rule, the Commission will codify its requirements in Commission Regulation 16.03. The Commission welcomes public comments on its proposal.

DATES: Comments must be received on or before September 17, 2010. The Commission or Commission staff will hold a public meeting during the comment period in order to discuss the proposed rulemaking.

ADDRESSES: Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *OCR@cftc.gov.* "Account Ownership and Control Report" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions. All comments must be in English.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Deputy Director, Market Compliance, 202–418–5641, or Cody J. Alvarez, Attorney Advisor, 202–418–5404, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission proposes to collect ownership and control information via an account "Ownership and Control Report" ("OCR") submitted weekly by all U.S. futures exchanges and other reporting entities (collectively, "reporting entities").[1] This Notice specifies the proposed content of the OCR, as well as its form and manner. In addition, it summarizes public comments received in response to a previously published Advanced Notice of Proposed Rulemaking ("ANPR") in which the Commission explained its need and intended uses for ownership and control information.

A. Advanced Notice of Proposed Rulemaking

On July 2, 2009, the Commission published for public comment an ANPR where it proposed to collect certain ownership, control, and related information for all trading accounts active on U.S. futures exchanges. The Commission stated its intention to collect this information via an OCR submitted periodically by DCMs and other reporting entities.[2] The ANPR was not a formal rule proposal; however, it did provide a detailed explanation of the Commission's need and intended uses for ownership and control information. The ANPR explained that the OCR would be designed to enhance market transparency, leverage the Commission's existing surveillance systems, and foster synergies between its market surveillance, trade practice, enforcement, and economic research programs. In addition, it addressed key technical points, including: (1) The data that the Commission planned to collect through OCRs; (2) the frequency with which OCRs were to be submitted; and (3) the form and manner in which OCRs should be provided. Finally, the ANPR gave examples of the Commission's intended uses for ownership and control information, and described existing Commission surveillance systems that would benefit from OCRs.

The Commission invited all interested parties to submit general comments on the OCR within a 45-day comment window.[3] In addition, it posed eight specific questions addressing what additional information, if any, should be included in the OCR; the root sources of ownership and control information; the flow of data from those sources through reporting entities and on to the Commission; the form and manner of OCR transmission; the costs and burdens that the OCR might impose on reporting entities and their root data sources; and related matters. The Commission stated that comments received in response to the ANPR would help it "formulate an effective and practical rule," and that comments would be "used in developing a proposed rule at a later date."[4] The Commission received a total of 12 comment letters from 16 interested parties.

All comment letters were reviewed carefully by Commission staff. They expressed a range of opinions, both in support and opposition to the OCR. Many comment letters understood the utility of gathering ownership and control information for at least some trading accounts, but questioned specific elements of the Commission's approach as outlined in the ANPR. The comments received and the Commission's responses are summarized in Section III below. Briefly stated, however, the Commission continues to believe that ownership and control information is fundamental to the effective regulation of 21st-century futures markets. While it has made some modifications in response to comments received, and also added several new data points, the Commission is now formally proposing the OCR largely as described in the ANPR.[5] The Commission welcomes all public comments.

II. Ownership and Control Information as a Regulatory Tool

A. Commission's Need for the OCR

The Commission's need for ownership and control information reflects fundamental changes in the technology, products, and platforms of

[1] "Reporting entities" are defined broadly to include any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission's trade practice or market surveillance programs. At present, reporting entities would include designated contract markets ("DCMs"), derivatives transaction execution facilities ("DTEFs"), and exempt commercial markets with significant price discovery contracts ("ECM SPDCs"). In addition, should the Commission adopt the proposed rule, it would also collect ownership and control information from foreign boards of trade ("FBOTs") operating in the U.S. pursuant to staff direct access no-action letters if such letters are conditioned on the regular reporting of trade data to the Commission. The Commission notes that much of the data required in the proposed OCR is already maintained by one or more registered entities to comply with existing regulatory requirements. The OCR will necessitate each reporting entity to collate and correlate these and other data points into a single record for trading accounts active on its trading facility, and to transmit such record to the Commission for regulatory purposes.

[2] 74 FR 31642 (July 2, 2009). The ANPR noted that "most reporting entities will be designated contract markets, but they could be any registered entity that provides trade data to the Commission on a regular basis." Footnote 1, above, emphasizes that reporting entities are not limited to DCMs.

[3] Comments were due on or before August 17, 2009.

[4] 74 FR 31642, at 31646 and 31643.

[5] For example, the proposed OCR does not require the last four digits of account owners' and controllers' social security numbers or taxpayer identification numbers, as was contemplated in the ANPR. In their place, however, it would collect account owners' and controllers' dates of birth, as well as their National Futures Association ("NFA") identification numbers, if any. The proposed OCR's complete data requirements are described in Section IV(A).

U.S. futures trading. DCMs, in particular, have undergone a decade-long transition from geographically-defined trading pits to electronic platforms with global reach. Between 2000 and 2009, electronic trading grew from approximately 9 percent to approximately 81 percent of volume on all U.S. DCMs. Over the same time period, the number of actively-traded futures and options contracts listed on U.S. exchanges increased more than seven fold, from approximately 266 contracts in 2000 to approximately 1,866 contracts in 2009.[6] Most importantly, total DCM futures and options trading volume rose from approximately 594.5 million contracts in 2000 to approximately 2.78 billion in 2009, an increase of over 368%.[7]

Volume growth and changes in trading technology have coincided with equally important developments in the business of futures trading. One development of significant regulatory consequence is the growing economic integration between DCM contracts and their equivalents traded on ECMs, FBOTs, or other DCMs. Such linkages present both new trading opportunities and new regulatory challenges for the Commission and exchanges. In particular, both must be vigilant that trading in one market is not used to distort another, or to facilitate abusive trading practices across markets. The Commission's role with respect to such linked contracts is especially vital, as it is best equipped to collect regulatory information from competing exchanges and conduct surveillance of linked contracts across markets.

A second development of regulatory consequence is the increased dispersion and opacity of market participants as U.S. exchange floors are replaced by a broader, global customer base. Whereas the Commission once monitored trading via on-site surveillance of open-outcry pits, today surveillance is primarily electronic and data-driven. Paradoxically, while electronic trading has conferred important informational advantages, including improved audit trails, the concomitant increases in trading volumes, products offered, and trader dispersion and anonymity have created equally important regulatory challenges. Foremost among these is scale. Effective surveillance of millions of daily records—for example, an average of approximately 2.9 million trades per day in December 2009—requires automated systems capable of intelligently searching for patterns and anomalies buried deep within the data. Crucially, it also requires comprehensive data streams with sufficient reference points to uncover relationships where none appear to exist and to analyze information based on desired criteria. The proposed OCR helps both the Commission and self-regulatory organizations accomplish these tasks by adding account control, account ownership, and common control or ownership as new reference points for trade practice and market surveillance programs.

Taken together, these and other changes have transformed regulation and self-regulation in the futures industry. The Commission has worked diligently to keep pace in every respect. Its efforts have included the assertion of jurisdiction where appropriate, and the acquisition of regulatory data—such as the proposed OCR—from all necessary sources. In March 2009, for example, the Commission adopted final rules with respect to significant price discovery contracts ("SPDCs") traded on ECMs, which, in some cases, have grown from nascent trading facilities to large electronic trading platforms listing contacts that rival DCM contracts and contracts that serve a significant price discovery function.[8] The final rules address concerns that trading in SPDCs, if insufficiently regulated, could adversely impact the contracts to which they are linked or the parties that refer to SPDCs for the pricing of transactions. The final rules also describe, in guidance, how the Commission expects to apply the statutory criteria for determining whether an ECM contract serves a significant price discovery function.[9] Once such a determination is made, SPDCs become subject to nine core principle requirements, including the provision of regulatory data to the Commission. As of June 28, 2010, eight ECM contracts have been recognized as SPDCs.[10] In another example, Commission staff has twice amended its direct access no-action letter for an FBOT offering DCM-linked contract(s), ultimately requiring additional regulatory data, including large trader reports and trade execution and audit trail data with respect to the linked contract(s).[11]

The Commission has also worked diligently to modernize its automated surveillance systems and to upgrade the data sources available for those systems. In many cases, the Commission already receives the information it requires for effective regulation, including large trader reports for market surveillance and exchange trade registers for trade practice surveillance.[12] The proposed OCR is intended to integrate these existing resources, and leverage them in dynamic new ways. As explained below, it would improve the Division of Market Oversight's ("DMO") detection and deterrence capabilities with respect to specific trade practice violations and market abuses. It would also help bridge the gap between individual transactions reported to the Commission on exchange trade registers and aggregate positions reported to it in large trader data.

The OCR would allow the Commission's Division of Enforcement ("DOE") and its Office of Chief Economist ("OCE") to better and more efficiently utilize regulatory data in support of their own missions. In addition, it would increase market

[6] Based on fiscal years 2000 and 2009, as reported in the Commission's *FY 2009 Performance and Accountability Report,* p.14.

[7] In addition, futures and options trading volume reached a peak of approximately 3.37 billion contracts traded in 2008, an increase of over 466% compared to the year 2000.

[8] Final rules were adopted on March 23, 2009 and became effective April 22, 2009. *See* 74 FR 12178.

[9] The criteria established by Section 2(h)(7) of the Act include price linkage and arbitrage relationships with other contracts, material price reference, and material liquidity.

[10] *See for example* 74 FR 37988 (July 30, 2009) (wherein the ICE Henry Financial LD1 Fixed Price contract became the first contract found by the Commission to perform a significant price discovery function).

[11] *See* Letter from Richard A. Shilts, Director, Division of Market Oversight, to Dee Blake, Director of Regulation, ICE Futures Europe (June 17, 2008) (requiring, among other things, that ICE Futures Europe provide a daily report of large trader positions in each linked contract). On January 21, 2009, the Commission published a Notice in the **Federal Register** to provide notice that the conditions set forth in the staff no-action letter dated June 17, 2008, would equally apply to no-action relief of any FBOT that lists for trading by direct access from the U.S. any linked contract. 74 FR 3570, 3572 (January 21, 2009). *See also* Letter from Richard A. Shilts, Director, Division of Market Oversight, to Dee Blake, Director of Regulation, ICE Futures Europe (August 20, 2009) (requiring, among other things, that ICE Futures Europe provide trade execution and audit trail data for the CFTC's Trade Surveillance System on a trade-date plus one basis).

[12] "Trade register" is a generic term for a comprehensive, daily record of every trade facilitated by an exchange, whether executed on the centralized market (via open-outcry or electronically) or off of it (*e.g.,* block trades and exchange of futures for swaps). Trade registers contain detailed information with respect to the terms of a trade (*e.g.,* contract, price, quantity, *etc.*), the parties involved, and other data points. They also contain trading account numbers, but no information with respect to the owners or controllers of those accounts. In addition, the trading account numbers in trade registers often do not correspond to account numbers reported to other Commission data systems, including its large trader reporting system. The Commission has recently standardized the content and format of all trade registers submitted to it, which are now required to be FIXML Trade Capture Reports. The Commission notes that OCR reporting requirements will be triggered by the regular reporting of trade data for use in the Commission's trade practice or market surveillance programs, regardless of whether such data is deemed a "trade register" by the entity providing it.

transparency and respond to new regulatory data needs in an era of predominantly electronic trading. In short, the proposed OCR reflects the Commission's belief that its traditional data resources—exchange trade registers and large trader reports—must be expanded. Accordingly, the Commission proposes to supplement those resources with ownership and control information for all trading accounts.

B. Specific Benefits Expected From the OCR

1. Benefits to DMO's Trade Practice and Market Surveillance Programs

The Commission's primary responsibility is to ensure that U.S. futures markets accurately reflect the underlying forces of supply and demand for all products traded, and that futures markets are free from fraud and abuse. DMO monitors all futures and option markets to detect and prevent price manipulation, abusive trading practices, and customer harm. It is concerned with both market-wide abuses, such as manipulation (*i.e.,* market surveillance) and individual trading violations (*i.e.,* trade practice surveillance); often, the two are connected. DMO's surveillance programs include routine monitoring of markets and trades, and detailed, data-driven investigations when appropriate.

To conduct its surveillance programs, DMO collects daily trade data from all U.S. DCMs or their regulatory service providers, as well as from ECMs with SPDCs and FBOTs with linked contracts. The data collected is central to DMO's trade practice surveillance program, and of growing importance to market surveillance and other regulatory efforts, as explained below. Presently, the Commission's trade practice and market surveillance programs utilize distinct platforms—the Integrated Surveillance System ("ISS") for market surveillance and the Trade Surveillance System ("TSS") for trade practice surveillance.[13]

Broadly speaking, ISS facilitates the storage, analysis, and mining of large trader data while TSS does the same for trade data. Both systems include a range of tools for automated surveillance, pattern detection, *ad hoc* examination of raw data, and investigation. One valuable benefit of the OCR is that it would help integrate these two primary systems by linking individual transactions reported on exchange trade registers (TSS) with aggregate positions reported in large trader data (ISS). DMO would have the data necessary to reconstruct trading based on trade registers, and determine how large traders established their positions as recorded in the large trader reporting system.

One important benefit of the OCR is that it would help TSS to make more sophisticated analytical use of the trade register data already available. As indicated previously, "trade register" is a generic term for a comprehensive, daily record of every trade facilitated by an exchange. Trade registers contain detailed information with respect to the terms of a trade, but no OCR-type data. Together, TSS and exchange trade registers aid in the detection, analysis, and investigation of numerous abusive trading practices, including trading ahead of customer orders, wash trading, pre-arranged trading, money-passing, and other trade practice violations.

To identify these violations and others that may arise in the future, DMO's trade practice analysts, equipped with TSS, must distinguish violative trading patterns hidden within extremely large data sets. However, TSS's analytical capabilities are proportional to the content of its source data, which presently does not include ownership and control information sufficient to aggregate related trading accounts within and across exchanges. This absence of ownership and control information impairs DMO's ability to efficiently detect trade practice violations such as those listed above, or to uncover other violations that would be evident with ownership and control information. For example, instances of potential money-passing (including money laundering) become much more evident when two apparently unrelated accounts with frequent trading activity are known to be under common ownership. In addition, the absence of ownership and control information impairs DMO's ability to identify small and medium sized traders whose open interest does not reach reportable levels, but who can still have deleterious effects on the markets during concentrated periods of intra-day trading. Such scenarios include intra-day position limit violations and "banging the close" manipulations. The OCR would allow DMO to addresses each of these current limitations.

2. Benefits to the Division of Enforcement

DOE investigates and prosecutes alleged violations of the Act and Commission regulations.[14] It can act against any number of persons and entities suspected of such violations, including individuals and firms registered with the Commission, those who are engaged in commodity futures and option trading on designated domestic exchanges, and those who improperly market futures and options contracts. DOE proceedings typically begin with careful investigations based on leads developed internally or information referred by other Commission divisions, industry self-regulatory associations; state, federal, and international authorities; and members of the public.

The OCR will be of immediate help to this investigatory work, especially if it relies on aggregating related trading accounts. DOE investigations in the areas of intra-day manipulation and trade practice abuses rely on exchange trade registers. At present, however, the absence of ownership and control information in trade register data presents an obstacle when DOE is investigating potential price manipulations or trade practice abuses, such as front-running. Without this information, DOE staff must first identify the universe of accounts traded in a relevant period, then request and await information from outside the Commission to identify the entity associated with the account number, and finally aggregate all identified entities that relate to a common owner. Only then can staff assess a particular owner's trading activity. This time-consuming process must be re-created every time DOE initiates an intra-day trading manipulation investigation. The Commission believes the information contained in the OCR would significantly reduce the time and resources expended in determining the identities and relationships between account holders, and thus facilitate DOE investigations and prosecutions across markets and exchanges.

[13] ISS tools and data are used to detect and prevent price manipulation and market congestion on regulated exchanges, and to enforce speculative position limits pursuant to section 4a of Commodity Exchange Act ("Act"). ISS receives data from reporting firms via large trader reports filed daily with the Commission. Large trader reports show open end-of-day positions in futures and options that are at or above specific reporting levels set by the Commission ("large traders"). Related accounts are aggregated by reporting firms and given a "special account number" which DMO uses to track their consolidated end of day positions. Like ISS, TSS is also a combination of analytical tools and databases. It also includes powerful algorithms to analyze large quantities of trade data for suspicious trading patterns. TSS forms the backbone of the Commission's automated trade practice surveillance program and also provides data and analysis for Commission enforcement and research programs, as described below.

[14] The Act is codified at 7 U.S.C. 1 *et seq.* (2000).

3. Benefits to the Office of the Chief Economist

OCE conducts research on major policy issues facing the Commission and assesses the economic impact of regulatory changes on the futures markets. It also participates in the development of Commission rulemakings, provides expert advice to other Commission offices and divisions, and conducts special studies and evaluations as required. An important objective of OCE is to help the Commission achieve deeper and more sophisticated knowledge of the futures markets from the data available to it. The OCR will advance this objective in significant ways.

OCE is particularly interested in the OCR as a tool for enhancing the transparency of regulated markets through the disclosure of information on related accounts. It has a number of initiatives under way designed to enhance the Commission's surveillance capabilities, assist in enforcement, and improve data integrity. Related account information derived from the OCR will help OCE to better link traders' intra-day transactions with their end-of-day positions. It will also help OCE to calculate how different categories of traders contribute to market wide open-interest. Building on these results, OCE will achieve more sophisticated benefits for the Commission, including new avenues of surveillance and enforcement tools. For example, armed with OCR/trade register-derived data, OCE will eventually be able to accurately identify and categorize market participants based on their actual trading behavior on a contract-by-contract basis, rather than on how they self-report to the Commission (*e.g.,* registration type or marketing/merchandising activity on Commission Form 40).

In addition to these specific projects, ownership and control information available via the OCR will allow OCE to perform more complete and accurate studies and provide more targeted guidance to other Commission staff in pursuing trade practice violations and attempted manipulations.

III. Comments Received in Response to the Advanced Notice

The Commission received 12 comment letters from 16 commenters in response to the ANPR. Comment letters were submitted by: the Air Transport Association of America, Inc. ("ATA"); CME Group Inc. ("CME Group"); the Futures Industry Association ("FIA"); Foley & Lardner LLP ("F&L"); ICE Futures U.S., Inc. ("ICE Futures"); the Kansas City Board of Trade ("KCBT"); MF Global Inc. ("MF Global"); the Minneapolis Grain Exchange ("MGEX"); Newedge USA, LLC ("Newedge"); Paul, Hastings, Janofsky & Walker LLP ("PH"); the Petroleum Marketers Association of America and the New England Fuel Institute, writing jointly ("PMMA/NEFI"); and one private commenter (Mr. Zhang).[15] Commission staff reviewed all comments carefully.

Many commenters recognized potential regulatory benefits stemming from enhanced ownership and control information, including benefits for the public, the Commission, or industry self-regulatory organizations.[16] Two commenters representing commodity trade associations strongly endorsed the OCR, noting their approval of "efforts to acquire all information from DCMs, ECMs, and DTEFs to improve market transparency and integrity."[17] The OCR also received qualified support from some DCMs. One DCM, for example, indicated that the OCR will promote "further integration of our existing market surveillance and trade practice surveillance data and bridge gaps that may exist between individual transaction data contained in the Exchange trade register and position data contained in large trader reports filed with the Exchange."[18] Another stated the OCR will "exponentially increase market transparency" and "Commission and exchange compliance staffs will benefit greatly from the wealth of information at their disposal."[19]

While commenters often acknowledged the regulatory value of gathering ownership and control information, many also expressed specific concerns with one or more elements of the OCR as described in the ANPR. One significant area of concern focused on the OCR's potential costs. Comments in this regard ranged from proposals to curtail the OCR to outright opposition to any OCR implementation. Commenters were also broadly concerned with the potential difficulty of acquiring certain OCR data points, and with whether every OCR data point contemplated in the ANPR is necessary to achieve the Commission's regulatory objectives. Finally, commenters raised concerns with respect to the privacy of ownership and control information and equal implementation of OCR requirements across exchanges. These concerns, and the Commission's responses to them, are summarized below.

A. The OCR's Costs, Benefits, and Alternatives

Several commenters raised concerns with respect to the OCR's potential costs. At one extreme, an FCM commenter expressed outright opposition to the OCR, claiming that it would "result in an inordinate amount of work and expense for many, if not most FCMs" and may "cause some FCMs to go out of business."[20] The FCM also asserted that the CFTC apparently had not "considered the burden that would be imposed on FCMs other than to a relatively nominal extent."[21] Similarly, an industry association representing numerous large FCMs stated that the OCR "would impose a significant burden on FCMs" and "the potential costs will far outweigh the expected benefits to the Commission."[22]

Many commenters concerned with the OCR's potential costs recommended that the Commission pursue a more limited OCR that focuses only on a limited number of trading accounts. Specifically, they suggested that the OCR should be a record of ownership and control for trading accounts tied to "special accounts" in the Commission's large trader reporting system. One DCM group, for example, asked the Commission to consider whether ownership and control information was necessary for every account, "as experience suggests there is little incremental regulatory value below certain thresholds."[23] It recommended that the Commission instead "automate the data collection process for Form 102s."[24] In support of its

[15] CME Group submitted a single comment letter on behalf of four DCMs: the Chicago Mercantile Exchange, Inc.; the Board of Trade of the City of Chicago, Inc.; the New York Mercantile Exchange, Inc.; and the Commodity Exchange, Inc. Its comments are noted here as those of a "DCM group."

[16] ATA, CME Group, ICE Futures, KCBT, MGEX, PMMA/NEFI, and Zhang.

[17] PMAA/NEFI Joint Comment Letter at 1. In the ANPR, the Commission stated that it anticipates most OCR reporting entities will be DCMs, but they could be any registered entity that provides trade data to the Commission on a regular basis.

[18] ICE Futures Comment Letter at 1.

[19] KCBT Comment Letter at 1.

[20] Newedge Comment Letter at 1 and 5.

[21] Newedge Comment Letter at 8. In a related footnote, Newedge described how the SEC "conducts a cost-benefit analysis," analyzes new rules under the Paperwork Reduction Act," and "prepares a final regulatory flexibility analysis in its rulemakings." The Commission notes that these elements were not included in the ANPR, which was not a proposed or final rule, but they are included in this Notice.

[22] FIA Comment Letter at 2.

[23] CME Group Comment Letter at 5.

[24] CME Group Comment Letter at 4. The Form 102, titled "Identification of Special Accounts," is part of the Commission's large-trader reporting system. The Form 102 must be filed by FCMs, clearing members and foreign brokers who carry

Continued

recommendation, the DCM group argued that the OCR is a "largely duplicative report" when compared to the Form 102 and that "modernizing" and "enhancing the accuracy" of the Form 102 would be more cost effective than developing a new report.[25] Similarly, an FCM commenter "question[ed] the benefits to be gained by obtaining Form 102-type information for small trades and/or inactive accounts,"[26] and an industry association contested "the necessity of collecting OCR data with respect to accounts that have not been designated 'special accounts.'"[27]

The Commission appreciates commenters' concerns with respect to the OCR's potential costs. However, it also believes that commenters have not fully understood the Commission's intended uses for ownership and control information. For example, commenters' emphasis on an enhanced Form 102 as an alternative to the OCR suggest that they view the OCR primarily as an addendum to the Commission's market surveillance program, which aims to detect and deter price manipulation through reporting and surveillance of open positions. In this regard, the Commission notes that while its objectives do include improved position surveillance, they also include improved trade surveillance—regardless of position size—and other regulatory goals outlined previously. Indeed, the proposed OCR forms a new category of surveillance data that will benefit any regulatory effort focused on trades and trading behavior by account owners and controllers within and across reporting entities. The Commission believes that such information is vital for effective oversight of the U.S. futures markets.

At the same time, the Commission is sensitive to the cost concerns raised in response to the ANPR. It invites interested parties to include detailed cost estimates in any future comment letters submitted with respect to the proposed OCR. Such estimates should be as specific as possible, should itemize different categories of costs (*e.g.,* hardware and software, personnel, one-time "start-up" costs, and on-going operational costs), and should reflect the costs to the commenter itself rather than an industry average. The Commission is also open to comments suggesting that the OCR should be limited to accounts meeting certain thresholds as a way of containing its costs. However, such comments should address an account's *trading volume or frequency* within a given time period, and not just its relationship to a reportable position under the large trader reporting system. Any comments suggesting that the Commission gather ownership and control information for only a subset of accounts based on their trading volume or frequency should also document the cost savings to the commenter from reporting only that subset. In addition, any such comments should also address how the commenter's proposed threshold would meet the Commission's regulatory needs as explained in this Notice.

A second significant theme in the comment letters pertained to the flow of ownership and control information from its root sources, through reporting entities, and on to the Commission. Citing cost and efficiency, two DCMs recommended that FCMs and clearing members submit their ownership and control information directly to the Commission.[28] They suggested that FCM reporting entities would benefit if their reporting systems could be built to a single Commission standard rather than to multiple exchange standards.[29] Another DCM recommended that ownership and control information be sent directly to the Commission to resolve any jurisdictional issues that might arise when exchanges require data from non-members.[30] In contrast to these DCM perspectives, an industry association representing FCMs agreed that "DCMs would be the appropriate funnel through which [OCR] information is transmitted to the Commission."[31] However, to avoid undue burden arising from divergent OCR standards at different exchanges, it also proposed that the "protocols prescribing the content, format and transmission of ownership and control information from FCMs to the several DCMs be uniform."[32]

The Commission agrees that uniform protocols are an absolute necessity for the OCR. Accordingly, the proposed rule specifies that reporting entities must adopt a single standard, acceptable to the Commission, for submitting their OCRs to the Commission. Such standards will apply to the OCR's content, format, and the time and manner of its transmission. The Commission anticipates that this requirement will lead reporting entities and their root data sources to coordinate their efforts and develop an industry-wide standard for the flow of ownership and control information from root data sources to reporting entities.[33] In addition, the Commission proposes to grant the industry adequate time to design and implement the OCR once a final rule is adopted, as explained below. With respect to jurisdictional issues, the Commission is aware that some market participants may not be members of their corresponding reporting entity. However, in these cases, or where "membership" is not a relevant concept based on an reporting entity's business structure, market participants must still access the exchange directly via its facilities or via those of an intermediary providing a technology interface, a clearing guarantee, or some other service. Successful implementation of the OCR will require reporting entities to offer their services only on the condition that ownership and control information be provided upon request by the relevant party in possession of such information. Finally, the Commission believes that reporting entities are the appropriate vehicle for reporting ownership and control information to the Commission. The trading account numbers which they provide in their OCRs must correlate perfectly to those reported on their related trade registers. Thus, reporting entities are in the best position to ensure that their trade registers and their OCRs match as required.

B. Ownership and Control Information May Be Difficult To Obtain or Unnecessary

Many commenters raised concerns with respect to the organizational and technological challenges that reporting entities and root data sources may face in gathering and standardizing ownership and control information. The FCM community, in particular, focused on the difficulty of aggregating data from different internal systems into a single OCR file. An industry association, for example, stated that "[t]he creation, use, form, storage and retention of data are not uniform across FCMs" and some information might even be "on paper stored at offsite retention centers" or otherwise unavailable.[34] An FCM explained how "many FCMs maintain

special accounts. Special accounts are accounts that reach large-trader reportable position levels in a particular product, these levels are established by the Commission.

[25] CME Group Comment Letter at 4.

[26] Newedge Comment Letter at 7. The Form 102, titled "Identification of Special Accounts," is part of the Commission's large-trader reporting system.

[27] FIA Comment Letter at 4.

[28] KCBT Comment Letter at 1. MGEX Comment Letter at 1.

[29] KCBT Comment Letter at 2.

[30] ICE Futures Comment Letter at 4.

[31] FIA Comment Letter at 2.

[32] FIA Comment Letter at 2.

[33] "Root data sources" are those entities from which reporting entities may need to gather certain ownership and control information in order to provide the Commission with a complete OCR for every trading account active in its markets.

[34] FIA Comment Letter at 2.

trade reporting information and trader/system IDs in different locations" and how it would be a "difficult and time-consuming task" to reconcile this data.[35]

A number of letters identified specific account and trade types that may present special challenges in an OCR.[36] One DCM group noted that "[g]ive-up transactions, bunched orders and omnibus accounts are widespread in the industry, and each creates challenges in the context of the OCR as currently proposed."[37] An industry association provided additional information, explaining that for give-up trades "[t]he account number used by the executing firm does not necessarily tie back to the account number used by the clearing firm for a customer's account."[38] Another DCM noted that "[e]xtra efforts will be needed to obtain and keep current detail[ed] information that involves omnibus accounts, index accounts with multiple investors, or any accounts with multiple owners, participants or controllers."[39] A third DCM explained its belief that omnibus and give-up accounts will be difficult to obtain information from "because the underlying accounts are not carried on the clearing member's books."[40] This concern was echoed by another FCM as an important component of its comment letter.

Some commenters questioned whether every OCR data point contemplated in the ANPR is necessary to achieve the Commission's regulatory objectives. One DCM, for example, stated that "it does not believe that all the information itemized in the Advanced Notice is necessary" and that "some of the information would be redundant."[41] Similarly, a DCM group focused specifically on the date of ownership assignment and the commodity trading advisor number, stating that these data points "may add complexity to the reporting process without commensurate value."[42]

As a consequence of these perceived challenges, the Commission received a significant number of comment letters suggesting that it form an industry-wide working group to discuss the OCR and its implementation. DCM and FCM commenters both concurred in the recommendation. One commenter, for example, called for an "inclusive, industry-wide committee calling on the expertise of all affected stakeholders * * * to address significant operational and other issues regarding the appropriate design of the OCR."[43]

The Commission is aware of the numerous challenges posed by the OCR. However, it believes that those challenges can be overcome via a coordinated industry effort and a reasonable implementation schedule. Upon the adoption of any final rule in this area, the Commission will grant reporting entities and root data sources considerable time to coordinate, develop, and implement the OCR. Specifically, the Commission would propose to require OCR test files from all reporting entities within 12 months of a final rule, and final OCR implementation within 18 months of a final rule. Interested parties are invited to comment on this proposed schedule. Any comments requesting additional time to implement test or final OCRs should include an alternate implementation schedule with specific dates and benchmarks.

The Commission also emphasizes that its proposal has a number of features intended to eliminate unnecessary data points from the OCR and to define ownership and control in less than the broadest possible terms. First, to facilitate implementation, the Commission has determined to eliminate from the OCR several data points that were included in the ANPR. For example, the proposed OCR does not include the date on which the trading account was assigned to its current owner(s). In addition, as discussed below, the proposed OCR would not collect information with respect to social security numbers or taxpayer identification numbers.

Second, the Commission notes that at least one technical obstacle, pertaining to give-ups, can potentially be addressed via improvements to the daily exchange trade registers on which OCR account numbers will be based. Via a separate initiative, the Commission has already requested that exchanges create a "give-up group ID" that links two related events—the execution of a trade and its subsequent give-up, both of which are reported on trade registers. In cases where an execution-only firm does not possess ownership and control information for the given-up trade, the reporting entity may collect it from the clearing firm, and the Commission will be able to form a complete record of the trade and its subsequent allocation through the give-up group ID.[44] With respect to omnibus accounts, however, the Commission believes that identifying their ultimate beneficial owners and controllers remains necessary despite the acquisition of information which will be required with respect to accounts trading on an undisclosed basis.

Third, the proposed OCR reduces the overall reporting burden by narrowing the definition of "ownership" with respect to collective investment vehicles ("CIV").[45] Under the proposed OCR, CIV ownership information will be required only with respect to persons whose ownership share is 10 percent or more of the CIV's net asset value, as defined in Commission Regulation 4.10. Fourth, the proposed OCR defines "controller" as an individual or individuals with the legal authority to exercise discretion over trading decisions by a trading account or with the authority to determine the trading strategy of an automated trading system. The *authority* to exercise discretion is sufficient to qualify as a controller, regardless of whether such authority is actually used. Individuals acting without discretion will not be considered account controllers.

Interested parties are invited to comment on the Commission's proposed definitions, including its proposed definitions of ownership and control, and to suggest specific alternatives if they will achieve the Commission's objectives in a more efficient manner. The Commission also invites comments from interested parties who believe that a data point in the proposed OCR is impossible to collect for technical reasons. Such comments should fully explain the technical obstacle, including the account, trade, or ownership type to which the obstacle applies. Comments should also identify the entity holding the data in question, or an explanation that the data is not maintained by any entity subject to the Commission's authority or that of a Commission registrant (including any requirement that a user of an exchange's facilities consent to providing ownership and control information prior to utilizing such facilities). Any request to deviate from the definitions or data points in the proposed OCR should include

[35] Newedge Comment Letter at 4.

[36] CME Group, FIA, ICE Futures, KCBT, MF Global, and MGEX.

[37] CME Group Comment Letter at 4.

[38] FIA Comment Letter at 3.

[39] MGEX Comment Letter at 2.

[40] KCBT Comment Letter at 3.

[41] ICE Futures Comment Letter at 2.

[42] CME Group Comment Letter at 4.

[43] FIA Comment Letter at 1.

[44] In this scenario, the executing firm should provide ownership and control information for the execution account, and the clearing firm should provide the account to which the trade is given-up. The Commission will link both through the give-up group ID.

[45] While "collective investment vehicle" is not defined in regulations under the CEA, it is "commonly used to describe any entity through which persons combine funds (*i.e.,* cash) or other assets, which are invested and managed by the entity." 67 FR 48328, 48331 (July 23, 2002).

technical diagrams; data flow-charts; FCM, introducing broker ("IB") and foreign broker account opening and record retention procedures with respect to that data point; and other detailed information as appropriate to establish the difficulty or impossibility of implementing the OCR as proposed. In short, while the Commission is prepared to amend the proposed OCR where necessary, it will do so only on the basis of detailed and well-documented comments.

Finally, the Commission notes that it does not intend to convene an industry working-group to develop the OCR. While industry coordination will be crucial, the Commission's role is to clearly articulate its requirements and expectations. Industry participants are best situated to determine how those requirements can be met. Should any element of the proposed OCR remain unclear, the Commission strongly encourages industry participants to present their questions via the public comment process for this proposed rule.

C. The OCR Should Be Implemented Equally Across Exchanges and Should Respect Privacy Considerations

Some commenters argued that DCMs should not be the only registered entities required to provide the OCR. One DCM group noted its concern that the OCR is limited to trading accounts active on U.S. futures exchanges, and does not "encompass trading on exempt commercial markets ("ECMs") and foreign boards of trade ("FBOTs")." The DCM group stated that such an exclusion "would give ECMs and FBOTs an unfair competitive advantage over U.S. futures exchanges."[46] Similarly, a commodity trade association urged the Commission to obtain OCR information from all trading platforms including the OTC market.[47]

The Commission agrees that OCR requirements should apply equally to all entities reporting trade data to the Commission on a regular basis for trade practice or market surveillance purposes. For purposes of this Notice, however, the proposed OCR specifically includes DCMs, DTEFs, and ECM SPDCs within the definition of reporting entities.[48] In addition, the Commission emphasizes that its proposed rule requires ownership and control information equally regarding both U.S. and non-U.S. entities and natural persons.

Should the Commission receive appropriate statutory authority with respect to OTC and swap transactions, it would consider collecting ownership and control information with respect to such transactions.[49] The Commission invites public comment in this area, including comment with respect to the entities (*e.g.,* trade repositories, designated contract markets, or swap execution facilities) from which the Commission should collect OCR data and the product and transaction types for which the Commission should collect data. The Commission invites public comment on any additional types of information or data elements related to OTC and swap transactions that should be collected and reported to the Commission.

Five commenters expressed concerns regarding OCR information security and confidentiality.[50] One law firm commenter, for example, focused its comment letter, on "ensuring that all identifying information, including highly sensitive Social Security number information, will be treated as confidential and not subject to public disclosure."[51] It specifically asked that the Commission "address confidentiality concerns as it moves forward with its rulemaking" and "incorporate a requirement that the exchanges, in gathering this information, have a duty to treat it as non-public and confidential."[52] An FCM commenter raised a similar concern when it asked "can the CFTC ensure that exchanges will not use sensitive account ownership or controller information for their own purposes?"[53] One DCM stated that the exchange "rarely found it necessary to obtain the Social Security Number ("SSN") or Tax Identification Number ("TIN") of a trader" and that the risks involved in the "collection, transmission and use of client SSN/TIN information by multiple entities outweigh the benefit that collection of such information would bestow."[54]

The Commission agrees with several of the privacy concerns raised above. Its internal use and handling of ownership and control information will be protected using controls mandated by the Federal Information Security Management Act of 2002 ("FISMA").[55] Specifically, OCR data will be treated as non-public personal information and will be subject to internal access controls. Submission of the OCR to the Commission will be through secure communications protocols. Any CFTC system or equipment used to store or transmit the OCR will be certified and accredited as a major system with medium risk and will have appropriate controls for access; awareness and training; audit and accountability; configuration management; contingency planning; identification and authentication; incident response; maintenance; media protection; physical environment; personnel; acquisition; communications; and integrity. Subject to a number of narrow exceptions, the Commission notes that Section 8(a) of the Act severely restricts disclosure of "information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[56] Furthermore, the Commission pursuant to Section 8a(6) of the Act, may in connection with investigations of improper trading or transactions, disclose to any registered entity, registered futures association or self-regulatory organization ("SRO"), factual data such as market positions, business transactions, and the names of the parties. However, the registered entity, registered futures association or SRO, may not disclose this information

[46] CME Group Comment Letter at 3.

[47] ATA Comment Letter at 1.

[48] The Commission notes that OCRs will only be required with respect to trading account numbers reported on trade registers. Thus, an ECM SPDC reporting trades in only certain contracts (i.e., SPDC contracts) will be required to provide ownership and control information only for trading accounts active in those contracts.

[49] Congress has begun to take steps to promote transparency in swap contracts. The financial services reform bills passed by the House of Representatives and the Senate each requires swaps to be cleared, subject to certain exemptions, and further requires, with respect to swaps that are subject to the clearing requirement, that such swaps be executed on a board of trade designated as a contract market under Section 5 of the Act or on a swap execution facility registered or exempt under Section 5h of the Act (where such a trading environment is available).

[50] FIA, F&L, ICE Futures, Newedge, and PH.

[51] F&L Comment Letter at 1.

[52] F&L Comment Letter at 1 and 2.

[53] Newedge Comment Letter at 6.

[54] ICE Futures Comment Letter at 2.

[55] *See* 44 U.S.C. 3541 *et seq.* FISMA was enacted in 2002 as Title III of the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat. 2899) and recognizes the importance of information security to the economic and national security interests of the United States. It requires the Commission and other federal agencies to develop, document and implement agency-wide programs to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

[56] Section 8(e) of the Act provides that the Commission may "upon request" furnish information in its possession to any committee of Congress, another U.S. government department or agency, individual state or foreign futures authority "acting within the scope of its jurisdiction." Similarly, disclosure of information is also permitted under Section 8(b) of the Act in connection with congressional, administrative or judicial proceedings, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act, or in any bankruptcy proceeding in which the Commission has intervened, or in which the Commission has the right to appear and be heard under Title 11 of the U.S. Code.

received from the Commission except in any SRO action or proceeding.[57]

The Commission has also determined not to collect the last four digit of account owners' and controllers' SSNs or TINs, as originally contemplated in the ANPR. While its objectives for the OCR require that the Commission identify all trading account owners and controllers uniquely within and across reporting entities, the Commission is also sensitive to the privacy and security concerns summarized above. Accordingly, the Commission proposes to achieve the unique identification that SSNs and TINs would have provided via a combination of other data points. The proposed OCR would require reporting entities to provide the name and address of a trading account's owner(s) and controller(s). It would also require the date of birth for each account owner and controller, as well as their NFA ID number, if any. These data points are additions to the OCR as contemplated in the ANPR, and seek to mitigate the loss of SSNs and TINs as unique identifiers for account owners and controllers.

In the alternative, or in addition to the aforementioned data points, the Commission invites public comment with respect to how the futures industry could develop and maintain a system to assign unique account identification numbers ("UAIN") to all account owners and account controllers. The Commission would consider requiring that the UAIN be utilized in the OCR and potentially other data reports submitted to the Commission for regulatory purposes. The Commission also invites comment on how this UAIN could be linked to all orders submitted to an exchange's electronic trading system or executed via open outcry, and included in the trade registers submitted daily to the Commission by exchanges. The Commission seeks comment on how the UAIN could be automatically linked to a trade when a user signs into a trading system. Should the Commission receive appropriate statutory authority with respect to OTC and swap transactions, the Commission seeks comment on how the UAIN could be linked to a swap transaction.

Finally, the proposed rule implementing the OCR requires each reporting entity to segregate information provided to it by root data sources if such data is provided in furtherance of the Commission's OCR requirements and not otherwise required to be provided by the reporting entity ("protected data"). More specifically, reporting entities must ensure that their protected data is used only for regulatory or enforcement purposes such as trade practice surveillance, market surveillance, audit, investigative, or rule enforcement. The use of protected data for any commercial reasons, including business development, is strictly prohibited. In addition, protected data must be under the exclusive control of the reporting entity's regulatory compliance department. Reporting entities should establish appropriate "firewall" procedures and access controls to ensure the confidentiality, privacy, and safekeeping of protected data within their regulatory compliance departments. Commission staff will review the adequacy and implementation of such controls during its periodic reviews of trading facilities' self-regulatory programs.

IV. Ownership and Control Report Outline

The OCR will serve as an ownership, control, and relationship directory for every trading account number reported to the Commission through reporting entities' trade registers. The data points proposed for the OCR have been specifically selected to achieve four Commission objectives. These include: (1) Identifying all accounts that are under common ownership or control at a single reporting entity; (2) identifying all accounts that are under common ownership or control at multiple reporting entities; (3) identifying all trading accounts whose owners or controllers are also included in the Commission's large trader reporting program (including Forms 40 and 102); and (4) identifying the entities to which the Commission should have recourse if additional information is required, including the trading account's executing firm and clearing firm, and the name(s) of the firm(s) providing OCR information for the trading account.

A. Specific Data Points Required by the Ownership and Control Report

To ensure that the objectives outlined above are achieved, each reporting entity's OCR should include the following information with respect to each account reported in its trade registers:

- The trading account number, as reported in the reporting entity's trade register (tags 448 and 452, Party Role 24, in the Trade Capture Report);
- The trading account's ultimate beneficial owner(s), including:
  - For each ultimate beneficial owner who is a natural person—
    - Their first, middle, and last name,
    - Their date of birth,
    - The address of their primary residence,
    - Their NFA identification number, if any;
  - For each ultimate beneficial owner who is not a natural person—
    - Their name and primary business address,
    - Their NFA identification number, if any;
- For trading account controller(s) (who must be natural persons):
  - The first, middle, and last name of each controller,
  - The date of birth of each controller,
  - The name and primary business address of the entity that employs each controller with respect to the reported account, if any;
  - The NFA identification number of each controller, if any;
- The date on which the trading account was assigned to its current controller(s);
- A designation of the trading account as one whose orders are generated exclusively by a natural person, exclusively by an automated trading system, or generated sometimes by a natural person and sometimes by an automated trading system;
- The special account number associated with the trading account, if one has been assigned;
- An indication of whether the trading account is part of a reportable account under the Commission's large trader reporting system,
  - In addition, for a trading account that becomes part of a reportable account under the Commission's large trader reporting system after December 31st, 2011, the date on which the trading account first becomes part of a reportable account;
- Indication of whether the trading account is a firm omnibus account, and if so, the name of the firm,
  - In addition, for a trading account that becomes part of firm omnibus account after December 31st, 2011, the date on which the trading account is first included in the firm's omnibus account;
- The name of the executing firm for the trading account, and its unique

[57] In connection with Section 8a(6), the Commission has designated and authorized certain Commission employees to disclose confidential information to certain, designated Exchange staff. *See* 17 CFR 140.72. The disclosure of confidential information in this Regulation specifically requires a prior determination by the Commission or its designees that the disclosure is necessary because "the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the [CEA]." 17 CFR 140.72(a).

identifier as reported in the TCR (TCR tags 448 and 452, Party Role 1);

- The name of the clearing firm for the trading account, and its unique identifier as reported in the TCR (TCR tags 448 and 452, Party Role 4);
- The name of each root data source providing the reporting entity with information with respect to the trading account;
- The name of the exchange or other entity submitting the OCR to the Commission; and
- The OCR transmission date.

B. Definition of Account Controller

For purposes of the OCR, "account controller" is defined as a natural person, or group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy. The authority to exercise discretion is sufficient, regardless of whether such authority is actually exercised. An individual who executes trades for an account, without input or discretion in any decision involving the account or its trades, will not be considered an account controller with respect to that account. With respect to CIVs, "ultimate beneficial owner" excludes those whose ownership share of the CIV is less than 10 percent of its net asset value, as defined in Commission Regulation 4.10.

V. Form, Manner, and Frequency of the Ownership and Control Report

Reporting entities should submit the OCR weekly, in FIXML via SFTP. Each reporting entity's first OCR submission should constitute a "master file" containing the required data for all trading account numbers present in its trade register during the previous 30 days. The master file will establish a baseline directory. Each subsequent OCR should be a weekly "change file" reporting only additions, deletions, or amendments to the master file. If the reported change includes changes to an account's owner(s) or controller(s), the effective date of such change should also be reported.

VI. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the Act.[58] By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, section 15(a) requires the Commission to "consider the costs and benefits" of a subject rule. Section 15(a) further specifies that the costs and benefits of proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.[59]

The proposed rule requires reporting entities to provide the Commission with certain ownership, control, and related information on a weekly basis for all active trading accounts. The Commission understands that reporting entities may not have all of the required OCR information and that the proposed rule could also have an impact on other entities that are sources of root data. While the Commission cannot fully quantify all of the costs to be borne by reporting entities and root data sources until the data collection process is fully implemented, it recognizes that the initial cost of developing and implementing the OCR could be significant. However, the Commission also believes that the OCR program, once implemented, will be less burdensome for reporting entities and root data sources to maintain on an ongoing basis.

Notwithstanding the costs to be incurred by reporting entities and root data sources, the Commission believes the OCR's benefits are substantial and important. As described above, the OCR will increase regulated markets' transparency to the Commission. It will also help the Commission to better meet regulatory data needs that have arisen as electronic platforms have become the dominant venue for regulated futures trading in the United States. In addition, the OCR will better equip the Commission to monitor trading practices across markets. It will also provide additional data and reference points which will further empower the Commission's automated trade surveillance system, TSS, and allow Commission staff to make more sophisticated analytical use of the trade register data already available. For example, OCE will be able to perform more complete and accurate studies and provide more targeted guidance to other Commission staff in pursuing trade practice violations and attempted manipulations. Also, DOE will use the information to reduce the time and resources expended in determining the identities and relationships between account holders, thereby facilitating DOE investigations and prosecutions across markets and exchanges.

After considering the costs and benefits, the Commission has determined to issue the proposed rule.

B. Paperwork Reduction Act

Provisions of proposed Commission Regulation 16.03 would result in new collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[60] The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is "Regulation 16.03—Ownership and control report" (OMB control number 3038–NEW). If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[61]

1. Information Provided by Reporting Entities

Under proposed Regulation 16.03, reporting entities, which presently would include DCMs, DTEFs, and ECM SPDCs, would be required to provide ownership and control reports to the Commission on a weekly basis. Such reports would include ownership, control and related information for each account active on the reporting entity.

Commission staff estimates that each reporting entity would expend 480

[58] 7 U.S.C. 19(a).

[59] *E.g., Fishermen's Dock Co-op., Inc.* v. *Brown,* 75 F3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking cost-benefit analyses).

[60] 44 U.S.C. 3501–3520.

[61] 7 U.S.C. 12(a)(1).

hours for discussions with staff and representatives of other reporting entities and root data sources to develop and implement the OCR process. The proposed rule would also require each reporting entity to expend approximately 5,676 hours to establish the required information technology infrastructure. At present, the Commission staff would receive weekly OCRs from up to 17 reporting entities.[62] Accordingly, the aggregate hours required for start-up by all reporting entities would total 104,652. Annualized over an estimated useful life of ten years, start-up requirements for all reporting entities combined would be approximately 10,465 hours per year.

In addition to the hours required for start-up, proposed Regulation 16.03, if adopted, would impose certain ongoing costs. Commission staff estimates that each reporting entity would expend about 33 hours for each weekly OCR transmitted to the Commission resulting in an aggregate requirement of 29,172 hours annually (assuming that such reports are provided by each reporting entity for each of 52 weeks).

It is also estimated that start-up and continuing costs may involve product and service purchases. Commission staff estimates that reporting entities could expend up to $8,000 annually per reporting entity on product and service purchases to comply with proposed Regulation 16.03. This would result in an aggregated cost of $ 136,000 per annum (17 reporting entities × $ 8,000).

The analysis above is a best estimate. Reporting entities may need to expend additional resources in order to acquire OCR data from root data sources; the number of reporting entities and their reporting requirements may change; and the trade volume (and the corresponding amount of OCR information) may vary at each reporting entity.[63]

While reporting entities are responsible for providing the OCR, the Commission is nonetheless aware that root data sources may be required to supply reporting entities with certain OCR data.[64] However, the Commission is not collecting information directly from the root data sources nor is it estimating their reporting burden under the PRA.

[62] Reporting entities presently include 1 ECM SPDC and 16 DCMs. As of June 28, 2010, all eight recognized SPDCs were trading on the same ECM.

[63] For example, an ECM is only required to provide OCR data with respect to their SPDCs and the number of SPDCs on an ECM may vary over time.

[64] Root data sources may include FCMs, CPOs, CTAs, and IBs.

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRA-submissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Regulatory Flexibility Act

1. Reporting Entities

The Regulatory Flexibility Act ("RFA") requires that agencies consider the impact of their regulations on small entities.[65] In a policy statement the Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[66] In that statement, the Commission concluded that DCMs are not small entities.[67] The Commission has also previously determined that DTEFs and ECMs (with or without SPDCs) are not small entities for purposes of the RFA.[68]

2. FCMs, IBs, Commodity Pool Operators ("CPOs"), and Commodit Trading Advisors ("CTAs")

The requirements of the proposed rule fall mainly on reporting entities, as described above. However, the Commission believes that root data sources may be prompted to provide reporting entities with some OCR data. In this regard, the Commission has previously determined that one potential root data source—FCMs—are not small entities for the purposes of the RFA.[69]

Other potential sources of root data include CPOs, CTAs, and IBs who may be required to provide OCR information to FCMs or reporting entities. With respect to CPOs, the Commission has previously determined that registered CPOs are not small entities based upon the Commission's existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.[70] In the case of CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under Regulation 4.13(a)(2).[71] In the case of CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the proposal.[72] Under the proposed rule, those CTAs and exempt CPOs that are in exclusive control of OCR information may be required to provide that information to reporting entities. The Commission believes much of the data to be provided by CTAs and exempt CPOs should already be possessed by CTAs and exempt CPOs. Also, any expenditure that must be made in order to comply with the proposed rule will likely be proportionate to the size of the CTA or exempt CPO. Therefore, to the extent a CTA or exempt CPO is a small entity and must provide OCR information, its related costs should also be smaller. In the event a CTA or exempt CPO might be considered a small entity required to provide OCR information, the Commission does not believe the proposed reporting

[65] 5 U.S.C. 601 *et seq.*

[66] 47 FR 18618 at 18619 (April 30, 1982).

[67] *Id.*

[68] 66 FR 42255 at 42268 (August 10, 2001).

[69] 47 FR 18618 (April 30, 1982).

[70] *Id.* at 18619–20.

[71] *Id.* at 18620.

[72] *Id.*

requirements to have a significant economic impact on that small entity.

With respect to IBs, the Commission previously stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[73] Under the proposed rule, reporting entities may require OCR information from IBs. However, much of the information required by the OCR, such as customer name and date of birth, is already maintained by registered IBs and/or FCMs in order to comply with anti-money laundering rules.[74] Also, Commission Regulation 1.37 already requires IBs to maintain the name of the person exercising control of the account.[75] Additional information required by the proposed rule, if not already available to reporting entities through an FCM, is likely maintained by IBs as part of their normal business practice. Furthermore, to the extent expenditures must be made to comply with the proposed rule, they should be commensurate with the size of the IB. For example, if an IB is small, with a limited number of customers, the burden to comply with the proposed rule should also be smaller. To the extent that IBs can be deemed to be small entities, the Commission does not consider the provision of OCR data to have a significant economic impact.

The Commission specifically requests comment on whether the proposed rules will have a significant economic impact on a substantial number of small entities.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 16

Commodity futures, Reports by contract markets.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend 17 CFR Part 16 as follows:

[73] 48 FR 35248, 35275–78 (Aug. 3, 1983).

[74] IBs may rely on FCMs to carry out customer identification procedures and thus customer information may be retained by the FCM.

[75] 17 CFR 1.37(a)(1).

PART 16—REPORTS BY CONTRACT MARKETS

1. The Authority Citation for Part 16 will be amended to read as follows:

Authority: 7 U.S.C. 2, 2(h)(7), 6a, 6c, 6g, 6i, 7, 7a, and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

2. Add § 16.03 to read as follows:

§ 16.03 Ownership and control report ("OCR").

(a) *Entities required to submit reports.* Ownership and control reports shall be filed by any registered entity required to provide the Commission with trade data on a regular basis, where such data is used for the Commission's trade practice or market surveillance programs ("reporting entities"). Reporting entities include, but are not limited to, designated contract markets, derivatives transaction execution facilities, and exempt commercial markets with significant price discovery contracts.

(b) *Information to be provided.* Each reporting entity shall provide the following information with respect to every trading account also reported in its trade register:

(1) The trading account number;

(2) The trading account's ultimate beneficial owner(s), including:

(i) For each ultimate beneficial owner who is a natural person—

(A) Their first, middle, and last name,

(B) Their date of birth, and

(C) The address of their primary residence,

(D) Their National Futures Association ("NFA") identification number, if any;

(ii) For each ultimate beneficial owner that is not a natural person—

(A) Their name and primary business address, and

(B) Their NFA identification number, if any;

(3) For trading account controller(s) (who must be natural persons):

(i) The first, middle, and last name of each controller,

(ii) The date of birth of each controller, and

(iii) The name and primary business address of the entity that employs each controller with respect to the reported account, if any, and

(iv) The NFA identification number of each controller, if any;

(4) The date on which the trading account was assigned to its current controller(s);

(5) A designation of the trading account as one whose orders are generated exclusively by a natural person, exclusively by an automated trading system, or generated sometimes by a natural person and sometimes by an automated trading system;

(6) The special account number associated with the trading account, if one has been assigned;

(7) An indication of whether the trading account is part of a reportable account under the Commission's large trader reporting system,

(i) In addition, for a trading account that becomes part of reportable account under the Commission's large trader reporting system after December 31st, 2011, the date on which the trading account first becomes part of a reportable account;

(ii) [Reserved]

(8) An indication of whether the trading account is a firm omnibus account, and if so, the name of the firm,

(i) In addition, for a trading account that becomes part of firm omnibus account after December 31st, 2011, the date on which the trading account is first included in the firm's omnibus account;

(ii) [Reserved]

(9) The name of the executing firm for the trading account, and its unique identifier reported in the reporting entity's trade register;

(10) The name of the clearing firm for the trading account, and its unique identifier reported in the reporting entity's trade register;

(11) The name of each root data source providing the reporting entity with information with respect to the trading account;

(12) The name of the reporting entity submitting the OCR to the Commission; and

(13) The OCR transmission date.

(c) *Definition of account controller.* For purposes of this section, "account controller" means a natural person, or a group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy. The authority to exercise discretion is sufficient, regardless of whether such authority is actually exercised. An individual who executes trades for an account, without input or discretion in any decision involving the account or its trades, will not be considered an account controller with respect to that account.

(d) *Account types subject to reporting.* Each reporting entity shall provide the information required in paragraph (b) of this section for all trading accounts also reported in its trade register, including

commodity pools and other collective investment vehicles ("CIV"), and omnibus accounts and any accounts trading on an undisclosed basis. Disclosure shall be made equally for accounts representing U.S. and non-U.S. entities and natural persons. *Provided however,* that if an ultimate beneficial owner's ownership share of a CIV is less than 10 percent of the CIV's net asset value, as defined in Commission Regulation 4.10, then the ultimate beneficial owner need not be reported.

(e) *Form, time, and manner of filing reports; uniform protocol required.* Each reporting entity shall submit its OCR in the time, manner, and format required by the Commission or its designee. Reporting entities shall adopt a single, uniform protocol, acceptable to the Commission, for the technical structure of the OCR.

(f) *Protection of OCR data.* Each Reporting entity shall segregate any information provided by its root data sources, if such data is provided in furtherance of the Commission's OCR requirements and not otherwise required to be provided by the reporting entity ("protected data"). Reporting entities must ensure that protected data is used only for regulatory or enforcement purposes such as trade practice surveillance, market surveillance, audit, investigation, or rule enforcement. Protected data shall be under the exclusive control of the reporting entity's regulatory compliance department. Reporting entities shall establish appropriate firewall procedures and access controls to ensure the confidentiality, privacy and safekeeping of protected data within their regulatory compliance departments.

Issued in Washington, DC, on July 8, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Concurring Statement of Commissioner O'Malia Regarding the Proposal for the Account Ownership and Control Report

I concur on the release of the Notice of proposed rulemaking related to Account Ownership and Control Report ("OCR"). The Commission must gain greater transparency over the data it receives. The OCR represents a place where technology must catch-up to how trades are executed in the futures markets so critical data ultimately flows to the Commission.

The events of May 6th clearly highlight that technology drives the structure and function of the markets. In order to better understand trading behavior in the derivatives markets, including the trading behaviors of high frequency traders, it is essential to discover who controls which accounts and how those trading styles impact markets, including the order book, which is vital to fulfilling our surveillance and enforcement obligations. CFTC staff recently noted in the preliminary report on the events of May 6th that "obtaining account ownership and control information in the exchange trade registers * * * would increase the timeliness and efficiency of account identification, an essential step in data analysis."[76] The Commission must get as close as possible to real-time surveillance and post-trade transparency; the OCR would move the Commission a step closer to that goal.

Currently, the data the Commission receives from exchanges and other reporting entities lacks information because the Commission has not demanded it. However, I believe the Commission must now demand ownership and control information on all trading accounts in order to enhance the transparency of information reported to the Commission. The proposed rule will allow the Commission to aggregate related trading accounts within and across exchanges in order to better detect abusive trading practices. For example, the OCR will allow the Commission's Division of Market Oversight to identify small and medium sized traders whose open interest does not reach reportable levels, but who can still have deleterious effects on the markets during concentrated periods of intra-day trading. Such intra-day trading scenarios include intra-day position limit violations and "banging the close" manipulations.

The OCR will also bridge the gap between individual transactions reported to the Commission on exchange trade registers and aggregate positions reported to it in large trader data so the Commission can determine how traders established their positions. The OCR will allow the Commission's Office of the Chief Economist to accurately identify and categorize market participants based on their actual trading behavior on a contract-by-contract basis, rather than on how they self-report to the Commission (e.g., registration type or marketing/merchandising activity on CFTC Form 40). In short, the OCR will allow the Commission to better oversee the markets.

Based on the comments received from the Advanced Notice of Proposed Rulemaking published in the **Federal Register** on July 2, 2009, I appreciate that there are concerns regarding the implementation of the OCR for numerous reasons, including the costs and the difficulty of acquiring specific data points. Therefore, it is critical that the Commission engage market participants including exchanges, clearing organizations, futures commission merchants, introducing brokers, and others to understand what data is available and the most effective means by which to acquire this data. I strongly support the modification to this proposed rule to accommodate a staff technical conference to provide market participants an opportunity to provide constructive recommendations as to the most effective means by which the Commission can collect this data.

The proposed financial reform legislation that is currently being negotiated by the Conference Committee will issue a new mandate to the Commission for the oversight of the swaps market. Under the proposed legislation the Commission will be hit with a tsunami of data that will need to be standardized to reflect ownership, control, and other information of the massive over-the-counter (OTC) market. If this legislation is signed into law, the OCR rulemaking, whether in the post-comment or possible implementation phase, will coincide with the Commission's rulemaking efforts under its new mandate. Therefore, I hope to receive comment with respect to the entities (*e.g.,* trade repositories, designated contract markets, or swap execution facilities) from which the Commission should collect OCR data and the product and transaction types for which the Commission should collect data. I hope to receive comment on any additional types of information or data elements related to OTC and swap transactions that should be collected and reported to the Commission. Finally, I am interested in receiving comment on how the derivatives industry could develop and maintain a system to assign unique account identification numbers ("UAIN") to all account owners and account controllers.

On a related issue, I understand that Commission staff is seeking to automate the information collected via CFTC Forms 40 and 102. This process is long overdue and must be accomplished in an expedited fashion. Automation of these forms will minimize the manual entry and cross checking of data and will minimize opportunities for human error. It is my hope that the Commission will release for public comment a proposed rule related to these forms later this summer.

[76] Preliminary Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues (May 18, 2010).

[FR Doc. 2010–17530 Filed 7–16–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–120391–10]

RIN 1545–BJ58

Requirement for Group Health Plans and Health Insurance Issuers To Provide Coverage of Preventive Services Under the Patient Protection and Affordable Care Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the IRS is issuing

temporary regulations under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) regarding preventive health services. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Office of Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to group health plans and health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 18, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120391–10), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG–120391–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120391–10).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karen Levin at 202–622–6080; concerning submissions of comments, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9815–2713T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9815–2713 also issued under 26 U.S.C. 9833. * * *

Par. 2. Section 54.9815–2713 is added to read as follows:

§ 54.9815–2713 Coverage of preventive health services.

[The text of proposed § 54.9815–2713 is the same as the text of paragraphs (a) through (c) of § 54.9815–2713T published elsewhere in this issue of the **Federal Register**].

Steven Miller

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–17243 Filed 7–14–10; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AB07

Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: FinCEN is extending the comment period for the referenced notice of proposed rulemaking, published June 28, 2010, for an additional thirty (30) days. The original comment period would have expired on July 28, 2010. The new extended comment period will expire on August 27, 2010.

DATES: The comment period for the proposed rule published June 28, 2010, at 75 FR 36589 is extended. Comments must be submitted on or before August 27, 2010.

ADDRESSES: You may submit comments, identified by RIN 1506–AB07, by any of the following methods:

- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket number TREAS–FinCEN–2009–0007.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB07 in the body of the text.

Inspection of Comments: Public comments received electronically or through the U.S. Postal Service sent in response to a "Notice and Request for Comment" will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN on (800) 949–2732 and select option 1.

SUPPLEMENTARY INFORMATION: FinCEN issued a notice of proposed rulemaking (75 FR 36589) on June 28, 2010 proposing to revise the Bank Secrecy Act ("BSA") regulations applicable to Money Services Businesses with regard to stored value or prepaid access. More specifically, the proposed changes include the following: renaming "stored value" as "prepaid access" and defining that term; deleting the terms "issuer and redeemer" of stored value; imposing suspicious activity reporting, customer information and transaction information recordkeeping requirements on both providers and sellers of prepaid access and, additionally, imposing a registration requirement on providers only; and exempting certain categories of prepaid access products and services posing lower risks of money laundering and terrorist financing from certain requirements.

We have received a number of comments to date, including a request to extend the deadline for comments in order to allow interested parties more time in which to comment on the proposals in the notice.

In light of the fact that an extension of time will not impede any imminent rulemaking and will allow additional interested parties to respond to the issues raised in the advance notice, we have determined that it is appropriate to extend the comment period until August 27, 2010.

Dated: July 13, 2010.

Charles M. Steele,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2010–17505 Filed 7–16–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0383]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This action is a supplemental notice of proposed rulemaking (SNPRM) to the Coast Guard's June 10, 2010, notice of proposed rulemaking (NPRM) that proposed special local regulations for the "Chesapeake Challenge" power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on October 1, 2010. This supplemental proposal adds an additional date to the "Chesapeake Challenge" power boat racing on October 3, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Patuxent River during the event.

DATES: Comments and related material must either be submitted on or before August 18, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0383 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2010–0383), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* inserting USCG–2010–0383 in the "Keyword" box, and then clicking "Search." If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* inserting USCG–2010–0383 in the "Keyword" box, and then clicking "Search." You

may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before the comment period ends using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in solving this problem, we will hold one at a time and place announced by a later notice in the **Federal Register**.

III. Background

On June 10, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Patuxent River, Solomons, MD" in the **Federal Register** (75 FR 111). The NPRM stated that on October 3, 2010, the Chesapeake Bay Powerboat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on a racetrack-type course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomon's Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. After the NPRM was published in the **Federal Register**, however, the Chesapeake Bay Powerboat Association submitted a revised Application for Approval of Marine Event (form CG–4423), notifying the Coast Guard on June 25, 2010 that they seek approval to conduct power boat races on the Patuxent River near Solomons, MD on October 1, 2010 and on October 3, 2010. The additional day of power boat racing in Maryland is due to the relocation of the Offshore Powerboat Association's 2010 World Championship event from Alabama in light of the Deepwater Horizon oil spill.

IV. Information Requested

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patuxent River. The regulations will be in effect from 10 a.m. on October 1, 2010 until 6 p.m. on October 3, 2010. Enforcement of the special local regulations will be from 10 a.m. to 6 p.m. on October 1st and 3rd only. The public is invited to comment on all aspects of this proposed rule, especially the new effective dates. The regulated area is unchanged from the notice of proposed rulemaking. The regulated area is approximately 4,000 yards in length and 1,700 yards in width, includes all waters of the Patuxent River, within lines connecting the following positions: From latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, Maryland. The effect will be to restrict general navigation in the regulated area during the event. Spectator vessels will be allowed to view the event from a designated spectator area within the regulated area, located within a line connecting the following positions: Latitude 38°19′14″ N, longitude 076°28′16″ W, thence to latitude 38°18′00″ N, longitude 076°27′26″ W, thence to latitude 38°18′02″ N, longitude 076°27′20″ W, thence to latitude 38°19′16″ N, longitude 076°28′10″ W, thence to the point of origin at latitude 38°19′14″ N, longitude 076°28′16″ W. Spectator vessels viewing the event outside the regulated area may not block the navigable channel. Other vessels intending to transit the Patuxent River will be allowed to safely transit around the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

This document is issued under authority of 33 U.S.C. 1233.

Dated: July 7, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–17473 Filed 7–16–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Address Management Services—Elimination of the Manual Card Option for Address Sequencing Services

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) 507.8 to eliminate the manual cards option for Address Sequencing service.

DATES: We must receive your comments on or before August 18, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service®, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed price eligibility, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "Address Management Services comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Ruth Jones at 901–681–4585, or Bill Chatfield at 202–268–7278.

SUPPLEMENTARY INFORMATION: Current mailing standards provide for the sequencing of address lists into carrier route walk sequence order by ZIP™ Code. Mailers use this service to become eligible for electronic Computerized Delivery Sequence (CDS) service. CDS service is needed in order to qualify mailings for Enhanced Carrier Route pricing, which requires address sequencing. For the manual option of Address Sequencing service, customers send address cards to the appropriate Address Management Services district office or to the delivery unit for manual processing. Although there were approximately 12 customers in Fiscal Year 2009; for 2010 year-to-date only 3 customers have requested this service. USPS recommends that these customers use the electronic option for Address

Sequencing service which analyzes if a customer's address list has sufficient saturation at the 5-digit ZIP Code level to qualify for CDS service. Electronic Address Sequencing (EAS) service provides mailers an electronic process that is more economical and efficient than manually sequencing cards. The electronic process provides customers with a faster processing turnaround and more consistent results.

Procedures

There is no price difference between the card and electronic options for Address Sequencing service; therefore, we propose to move customers to the electronic version, which conveys information in a secured electronic format. Currently, 2 of the 12 card option Address Sequencing customers already also subscribe to EAS service. Beginning in January 2011, the Postal Service proposes that the Address Sequencing card option would no longer be available to mailers.

We also propose to improve DMM sections 507.8.2 through 507.8.7 by organizing, consolidating and rearranging the flow of information so that it is easier to read.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

[Revise heading of 8.0 as follows:]

8.0 Electronic Address Sequencing (EAS) Service

[Revise title and text of 8.1 as follows:]

8.1 Service Description, Options, and Fees

Electronic Address Sequencing (EAS) service processes a customer's addresses file for walk sequence and/or qualification for Computerized Delivery Sequence (CDS). EAS offers a basic service with two additional service options as explained below. Customers submit their address files to the National Customer Support Center (NCSC) in Memphis, TN, for electronic processing. See Notice 123, Price List, for fees.

8.1.1 Basic Service

The basic service sequences the address files and removes all incorrect or undeliverable addresses. A fee is charged for each incorrect or undeliverable address that is removed. In addition, mailers can choose one of the services in 8.1.2 and/or 8.1.3. Fees are applied as follows:

a. Sequence remaining addresses (no fee).

b. Remove incorrect or undeliverable addresses (fee).

8.1.2 Adding Sequence Numbers for Missing Addresses

This service option sequences the address files, removes all incorrect or undeliverable addresses, adds sequence numbers to all deliverable addresses submitted, and identifies the location of missing addresses. A fee is charged for each incorrect or undeliverable address that is removed. No fee is charged for identifying the location of missing addresses. Fees are applied as follows:

a. Sequence remaining addresses (no fee).

b. Remove incorrect or undeliverable addresses (fee).

c. Identify the location of missing addresses (no fee).

8.1.3 Adding Missing or New Addresses

This service option sequences the address files, removes all incorrect or undeliverable addresses, and adds new or missing addresses (including rural address conversions to city-style addressing). For each 5-digit ZIP Code grouping, the address list must contain 90% to 110% of all possible deliveries. Address groupings include city carrier (residential addresses only); city carrier (business addresses only); city carrier (combination of residential and business addresses); rural and highway contract route addresses; and Post Office box addresses. A fee is charged for each incorrect or undeliverable address that is removed and for each address (possible delivery) that is added to the customer's address list. For apartment or office buildings with a series of addresses for which the USPS provides a range of addresses, the charge is for each address (possible delivery) in the range or series. Customers requesting this service will be allowed only three attempts to qualify a ZIP Code grouping in a 12-month period. Fees are applied as follows:

a. Sequence remaining addresses (no fee).

b. Remove incorrect or undeliverable addresses (fee).

c. Insert missing or new addresses (fee).

[Delete current items 8.2 through 8.7 in their entirety and replace with items 8.2 through 8.4 as follows:]

8.2 Submission and Processing of Electronic Files

8.2.1 Submission of Electronic Files

The customer must submit address files on electronic media in a flat text file to the CDS Department at the NCSC (see 608.8 for address). The customer must not submit an address file in excess of 110% of the possible deliveries for a specific 5-digit ZIP Code delivery area. Additional information is available in the EAS User Guide on RIBBS at *http://ribbs.usps.gov.*

8.2.2 Delivery Unit Summary

The customer must submit an electronic Delivery Unit Summary for each file submitted indicating the 5-digit ZIP Code to be processed.

8.2.3 Payment

Once payment is received for services provided in 8.1.1 and 8.1.2, the NCSC returns the address file to the customer. For services provided in 8.1.3, all fees must be received prior to fulfillment of CDS data.

8.2.4 Seasonal Addresses

For CDS qualified mailers, addresses receiving mail only during specific seasons (*e.g.,* summer only) are identified in the CDS file.

8.2.5 Address Seeds

For CDS qualified mailers, the USPS will provide seed addresses to list owners for inclusion in their address files for file protection upon request. If

a request for sequencing contains a seed address, the owner of the seed address will be notified within 30 days.

8.3 No Charge Services

The following services are provided at no charge for all three levels of service:

a. If the customer includes a rural-style address (RR/box number) in an address file submitted for sequencing, and a street address is assigned to that box number, the correct address is included at no charge.

b. The USPS attempts, but does not guarantee, to make simple corrections to addresses (*e.g.,* obvious spelling errors) that can be identified as specific delivery addresses and are not undeliverable as addressed or nonexistent.

8.4 Submitting Properly Sequenced Mailings

8.4.1 Customer Responsibility

Customers must ensure that mailings are prepared in correct carrier route delivery sequence and resequence an address file when necessary. The USPS does not provide list-sequencing service for mailings not prepared in correct carrier route delivery sequence if the customer is so notified but fails to take corrective action.

8.4.2 Changes

When delivery changes affect delivery sequence, CDS customers will automatically receive an updated electronic file from the USPS.

8.4.3 Out-of-Sequence Mailing

If a mailing is found to be out of sequence, the customer is informed in writing both of the error and that, unless the situation is corrected, the USPS will not provide carrier route sequencing service. If the customer does not take corrective action, the USPS gives written notice that the customer is no longer allowed to submit address files to the NCSC for sequencing. Within 30 days, the customer may file a written appeal with the postmaster who gave notice.

8.4.4 Reinstatement

A customer denied address file sequencing service for a specific ZIP Code may not submit address files to the NCSC for sequencing where that sequencing service was terminated for 1 year after the effective date of termination. After that time, the customer is again authorized to submit the ZIP Code address files to the NCSC for sequencing. At any time during the year after termination of service, the customer may renew the submission if the NCSC is provided evidence that the customer has taken all necessary action to correct the past errors.

* * * * *

509 Other Services

1.0 Address Information Systems Products

* * * * *

1.4 Carrier Route Schemes

[Revise text of 1.4 as follows:]

Under, 507.7.2.2, *Carrier Route File,* a mailer may ask for a copy of the city scheme used by clerks for sorting mail. The mailer is responsible for sorting using the current bimonthly Carrier Route File scheme.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–17460 Filed 7–16–10; 8:45 am]

BILLING CODE 7710–P

Notices

Federal Register
Vol. 75, No. 137
Monday, July 19, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 13, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Federal-State Marketing Improvement Program (FSMIP).

OMB Control Number: 0581–0240.

Summary of Collection: The Federal-State Marketing Improvement Program (FSMIP) operates pursuant to the authority of the Agricultural Act of 1946 (7 U.S.C. 1621, *et seq.*). Section 204(b) authorizes the Secretary of Agriculture to make available funds to State Departments of Agriculture, State bureaus and departments of markets, State agricultural experiment stations, and other appropriate State agencies for cooperative projects in marketing service and in marketing research to effectuate the purposes of title II of the Agricultural Act of 1946. FSMIP provides matching grants on a competitive basis to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system.

Need and Use of the Information: The information collection requirements in this request are needed to implement the Federal-State Marketing Improvement Program (FSMIP). The information will be used by the Agricultural Marketing Service (AMS) to establish the entity's eligibility for participation, the suitability of the budget for the proposed project, and compliance with applicable Federal regulations.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: Annually; Semi-annually.

Total Burden Hours: 7,115.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–17464 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2010 Through June 30, 2011

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and snacks served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and snacks served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the laws and regulations governing the Child and Adult Care Food Program.

DATES: These rates are effective from July 1, 2010 through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Brewer, Section Head, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, 703–305–2590.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice have the meanings ascribed to them in the Child and Adult Care Food Program regulations, 7 CFR part 226.

Background

Pursuant to sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and sections 226.4, 226.12 and 226.13 of the

regulations, notice is hereby given of the new payment rates for institutions participating in the Child and Adult Care Food Program (CACFP). These rates are in effect during the period, July 1, 2010 through June 30, 2011.

As provided for under the law, all rates in the CACFP must be revised annually, on July 1, to reflect changes in the Consumer Price Index (CPI), published by the Bureau of Labor Statistics of the United States Department of Labor, for the most recent 12-month period. In accordance with this mandate, the United States Department of Agriculture last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes, for the period from July 1, 2009 through June 30, 2010, on July 15, 2009, at 74 FR 34295.

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per Meal Rates in Whole or Fractions of U.S. Dollars]

[Effective from July 1, 2010–June 30, 2011]

Centers	Breakfast	Lunch and supper [1]	Snack
Contingous States:			
Paid	0.26	0.26	0.06
Reduced Price	1.18	2.32	0.37
Free	1.48	2.72	0.74
Alaska:			
Paid	0.39	0.42	0.11
Reduced Price	2.06	4.01	0.60
Free	2.36	4.41	1.21
Hawaii:			
Paid	0.30	0.30	0.08
Reduced Price	1.42	2.78	0.43
Free	1.72	3.18	0.87

Day care homes	Breakfast		Lunch and supper		Snack	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Contiguous States	1.19	0.44	2.22	1.34	0.66	0.18
Alaska	1.89	0.67	3.60	2.17	1.07	0.29
Hawaii	1.38	0.50	2.60	1.57	0.77	0.21

Administrative reimbursement rates for sponsoring organizations of day care homes per home/per home rates in U.S. dollars	Initial 50	Next 150	Next 800	Each Addl
Contiguous States	102	78	61	53
Alaska	165	126	98	87
Hawaii	119	91	71	63

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the Program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register.**

The changes in the national average payment rates for centers reflect a 1.14 percent increase during the 12-month period, May 2009 to May 2010, (from 223.023 in May 2009, as previously published in the **Federal Register**, to 225.573 in May 2010) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 0.33 percent increase during the 12-month period, May 2009 to May 2010, (from 215.088 in May 2009, as previously published in the **Federal Register**, to 215.793 in May 2010) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.02 percent increase during the 12-month period, May 2009 to May 2010, (from 213.856 in May 2009, as previously published in the **Federal Register**, to 218.178 in May 2010) in the series for all items of the CPI for All Urban Consumers.

The total amount of payments available to each State agency for distribution to institutions participating in the Program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice has been determined to be not significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 13, 2010.

Julia Paradis,

Administrator.

[FR Doc. 2010–17502 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2010 Through June 30, 2011

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2011 (July 1, 2010 through June 30, 2011) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: The rate in this notice is effective July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Michelle Waters, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2010 Through June 30, 2011

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 20.25 cents for the period July 1, 2010 through June 30, 2011.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index increased by 4.1 percent from 171.97 for March, April, and May of 2009, as previously published in the **Federal Register**, to 179.10 for the same three months in 2010. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2010 through June 30, 2011 will be 20.25 cents per meal. This is an increase of .75 cents from the school year 2010 (July 1, 2009 through June 30, 2010) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: July 13, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–17504 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Project Voting, (6) Discuss Meeting Schedule, (7) Report on Existing Projects, (8) Discuss New Membership, (9) Next Agenda.

DATES: The meeting will be held on July 22, 2010 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; E-mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 19, 2010 will have the opportunity to address the committee at those sessions.

Dated: July 8, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–17290 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Chequamegon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chequamegon Resource Advisory Committee will meet in Park

Falls, Wisconsin. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on August 11, 2010, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Forest Service Park Falls Office, Large Conference Room, 1170 4th Ave., South, Park Falls, WI. Written comments should be sent to Sarah Yoshikane, Chequamegon-Nicolet National Forest, P.O. Box 578, 113 East Bayfield St., Washburn, WI 54891. Comments may also be sent via e-mail to *syoshikane@fs.fed.us,* or via facsimile to 715–373–2878.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891. Visitors are encouraged to call ahead to 715–373–2667 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sarah Yoshikane, RAC coordinator, USDA, Chequamegon-Nicolet National Forest, 113 East Bayfield St., Washburn, WI 54891; (715) 373–2667; E-mail *syoshikane@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel; (2) Receive materials explaining the process for considering and recommending Title II projects; (3) Selection of a chairperson by the committee members; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 7, 2010.

Paul I.V. Strong,

Forest Supervisor.

[FR Doc. 2010–17443 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the "national average payments," the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products.

DATES: These rates are effective from July 1, 2010 through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2010 through June 30, 2011, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution which participates in the Special Milk Program is 17.75 cents. This reflects an increase of 10.55 percent in the Producer Price Index for Fluid Milk Products from May 2009 to May 2010 (from a level of 174.4 in May 2009 as previously published in the **Federal Register** to 192.8 in May 2010).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2010 through June 30, 2011 reflect a 1.14 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2009 to May 2010 (from a level of 223.023 in May 2009 as previously published in the **Federal Register** to 225.573 in May 2010). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels

for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C.1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2010 through June 30, 2011. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 2008–09, the payments for meals served are: *Contiguous States*—paid rate—26 cents, free and reduced price rate—26 cents, maximum rate—34 cents; *Alaska*—paid rate—42 cents, free and reduced price rate—42 cents, maximum rate—53 cents; *Hawaii*—paid rate—30 cents, free and reduced price rate—30 cents, maximum rate—39 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2008–09, payments are: *Contiguous States*—paid rate—28 cents, free and reduced price rate—28 cents, maximum rate—34 cents; *Alaska*—paid rate—44 cents, free and reduced price rate—44 cents, maximum rate—53 cents; *Hawaii*—paid rate—32 cents, free and reduced price rate—32 cents, maximum rate—39 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—246 cents, reduced price lunch—206 cents; *Alaska*—free lunch—399 cents, reduced price lunch—359 cents; *Hawaii*—free lunch—288 cents, reduced price lunch—248 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—74 cents, reduced price snack—37 cents, paid snack—06 cents; *Alaska*—free snack—121 cents, reduced price snack—60 cents, paid snack—11 cents; *Hawaii*—free snack—87 cents, reduced price snack—43 cents, paid snack—08 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast—148 cents, reduced price breakfast—118 cents, paid breakfast—26 cents; *Alaska*—free breakfast—236 cents, reduced price breakfast—206 cents, paid breakfast—39 cents; *Hawaii*—free breakfast—172 cents, reduced price breakfast—142 cents, paid breakfast—30 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast—176 cents, reduced price breakfast—146 cents, paid breakfast—26 cents; *Alaska*—free breakfast—282 cents, reduced price breakfast—252 cents, paid breakfast—39 cents; *Hawaii*—free breakfast—205 cents, reduced price breakfast—175 cents, paid breakfast—30 cents.

Payment Chart

The following chart illustrates the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof]
[Effective from July 1, 2010–June 30, 2011]

National school lunch program*	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	0.26	0.28	0.34
Reduced price	2.32	2.34	2.49
Free	2.72	2.74	2.89
Alaska:			
Paid	0.42	0.44	0.53
Reduced price	4.01	4.03	4.26
Free	4.41	4.43	4.66
Hawaii:			
Paid	0.30	0.32	0.39

SCHOOL PROGRAMS—MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES—Continued

[Expressed in dollars or fractions thereof]

[Effective from July 1, 2010–June 30, 2011]

National school lunch program*	Less than 60%	60% or more	Maximum rate
Reduced price	2.78	2.80	2.97
Free	3.18	3.20	3.37
School breakfast program		**Non-Severe need**	**Severe need**
Contiguous States:			
Paid		0.26	0.26
Reduced price		1.18	1.46
Free		1.48	1.76
Alaska:			
Paid		0.39	0.39
Reduced price		2.06	2.52
Free		2.36	2.82
Hawaii:			
Paid		0.30	0.30
Reduced price		1.42	1.75
Free		1.72	2.05
Special milk program	**All milk**	**Paid milk**	**Free milk**
Pricing programs without free option	0.1775	N/A	N/A.
Pricing programs with free option	N/A	0.1775	Average cost per. ½ pint of milk.
Nonpricing programs	0.1775	N/A	N/A.
Afterschool snacks served in afterschool care programs			
Contiguous States:			
Paid			0.06
Reduced price			0.37
Free			0.74
Alaska:			
Paid			0.11
Reduced price			0.60
Free			1.21
Hawaii:			
Paid			0.08
Reduced price			0.43
Free			0.87

* Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

July 13, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–17507 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0098]

Solicitation of Letters of Interest to Participate in Biotechnology Quality Management System Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is soliciting letters of interest to participate in the APHIS Biotechnology Quality Management System Program. The Biotechnology Quality Management System Program is a voluntary

compliance assistance program designed to help regulated entities develop and implement sound management practices, thus enhancing compliance with the regulatory requirements for field trials and movement of genetically engineered organisms in 7 CFR part 340.

DATES: Letters of interest may be submitted at any time.

FOR FURTHER INFORMATION CONTACT: Dr. Edward Jhee, Chief, Compliance Assistance Branch, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 91, Riverdale, MD 20737-1236; (301) 734-6356, (*edward.m.jhee@aphis.usda.gov*).

SUPPLEMENTARY INFORMATION:

Background

APHIS regulates the introduction—the importation, interstate movement, and environmental release—of genetically engineered (GE) organisms that are, or may be, plant pests. It is essential that applicants approved to introduce regulated GE organisms comply with all APHIS regulations and permit conditions. To assist regulated entities in achieving and maintaining compliance with the regulatory requirements for field trials and movements of GE organisms in 7 CFR part 340, APHIS has developed a voluntary, audit-based compliance assistance program known as the Biotechnology Quality Management System Program (BQMS Program). The BQMS Program is designed to assist all regulated entities—to include universities, small businesses, and large companies—develop sound management practices through the creation and implementation of a customized biotechnology quality management system (BQMS).

APHIS conducted a BQMS Program pilot development project in 2009, during which five entities participated and assisted APHIS in evaluating a BQMS draft audit standard, program training sessions, and audit procedures. APHIS selected the volunteer participants for the pilot program after soliciting letters of interest through a notice[1] published in the **Federal Register** on September 2, 2008 (73 FR 51266-51267, Docket No. APHIS–2008–0098). In addition, APHIS published a notice in the **Federal Register** (74 FR 26831-26832, Docket No. APHIS-2008-0098) on June 4, 2009, soliciting comments from the public on the BQMS draft audit standard. Comments on the BQMS draft audit standard were to have been received on or before August 3, 2009. APHIS subsequently published a notice in the **Federal Register** on August 24, 2009 (74 FR 42644, Docket No. APHIS-2008-0098), reopening the comment period on the draft audit standard until October 23, 2009.

Following the pilot development project and after evaluating the comments submitted on the BQMS draft audit standard, APHIS made adjustments to the BQMS Program and to the BQMS audit standard. APHIS will soon publish a notice in the **Federal Register** announcing the availability of our evaluation of the comments received and the availability of a revised BQMS audit standard.

APHIS is now soliciting letters of interest from regulated entities interested in participating in the BQMS Program and the requisite training sessions. APHIS anticipates scheduling two training sessions during the remainder of calendar year 2010, most likely during summer and fall, and two training sessions in 2011, most likely in spring and fall. Regulated entities interested in participating should indicate their preference for the scheduling of a training session. Exact training session dates will be determined following discussions with interested entities. Each training session will be limited to five or six entities with approximately two or three representatives from each entity.

Participants in the BQMS Program will be expected to commit to the following:

- Attend required APHIS training sessions on the BQMS Program;
- Develop and implement a BQMS within their organization;
- Establish methods and procedures for monitoring critical processes and procedures for the movement and field testing of regulated GE organisms;
- Participate in evaluations after completing training modules; and
- Submit to a third-party verification audit in order to receive full Program recognition.

Participating in the BQMS Program will provide regulated entities with concrete, practical compliance assistance and will afford participants an opportunity to demonstrate their commitment to regulatory accountability, increased transparency, and the identification and implementation of measures to minimize the occurrence of compliance infractions.

APHIS is interested in advancing the BQMS Program in the next few months and encourages interested entities to submit letters of interest as soon as possible. APHIS will, however, accept letters of interest at any time. Interested entities may submit letters of interest by mail or e-mail to the person listed under **FOR FURTHER INFORMATION CONTACT**. APHIS will promptly contact all regulated entities that submit letters of interest to discuss their participation in the BQMS Program and requisite training sessions. A list of future training dates will be posted on the APHIS Web site at (*http://www.aphis.usda.gov/biotechnology/news_bqms.shtml*).

Done in Washington, DC, this 13th day of July 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–17526 Filed 7–16–10: 12:33 pm]

BILLING CODE: 3410–34–S

[1] All notices mentioned in this docket, as well as comments received and supporting and related materials, can be viewed at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0098*).

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Utah Advisory Committee to the Commission will convene by conference call at 10 a.m. on Thursday, August 5, 2010. The purpose of this meeting is to provide a brief overview of recent Commission and regional activities, discuss civil rights issues in the state, discussion regarding the Utah Anti-Discrimination Division Audit and next steps, and plan future activities and projects.

This meeting is available to the public through the following toll-free call-in and conference ID numbers: 1–(866) 364–8798; conference ID 88209392. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to

register by contacting Evelyn Bohor of the Rocky Mountain Regional Office and TTY/TDD (303) 866–1049 by noon on August 2, 2010.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by September 5, 2010. The address is: U.S. Commission on Civil Rights, Rocky Mountain Regional Office, 1961 Stout Street, Suite 240, Denver, CO 80294. Comments may be e-mailed to *ebohor@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 14, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–17532 Filed 7–16–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Saint Louis University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 10–019.

Applicant: Saint Louis University, St. Louis, MO 63103.

Instrument: Electron Microscope.

Manufacturer: FEI Co., Czech Republic.

Intended Use: See notice at 75 FR 34096, June 16, 2010.

Docket Number: 10–021.

Applicant: South Dakota School of Mines and Technology, St. Rapid City, SD 57701.

Instrument: Electron Microscope.

Manufacturer: JEOL, Japan.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Docket Number: 10–024.

Applicant: National Institutes of Health, Bethesda, MD 20892–0851.

Instrument: Electron Microscope.

Manufacturer: FEI Co., the Netherlands.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Docket Number: 10–026.

Applicant: National Institutes of Health, Bethesda, MD 20892–0851.

Instrument: Electron Microscope.

Manufacturer: FEI Co., the Netherlands.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 13, 2010.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–17537 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave, NW., Washington, DC.

Comments: None received.

Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of its order.

Docket Number: 10–025.

Applicant: University of Minnesota, Department of Chemical Engineering and Materials Science), Minneapolis, MN 55455.

Instrument: High Pressure Oxygen Sputtering System.

Manufacturer: Forschungszentrum Juelich GmbH, Germany.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Reasons: A pertinent characteristic of this instrument is that the special design of the sputter sources and vacuum chamber/pumping system allows it to operate properly at pressures in excess of 1 Torr. It also is designed to work in pure oxygen and is capable us substrate heating to over 900 C in a high pressure such an environment. We know of no instrument suited to these purposes, which was being manufactured in the United States at the time of order of this instrument.

Docket Number: 10–027.

Applicant: Argonne National Laboratory, Lemont, IL 60439.

Instrument: MultiView 400 SPM/NSOM/Confocal Multi Probe System Probe and Sample Scanning Scan Head Assembly.

Manufacturer: Nanonics Imaging Ltd., Israel.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Reasons: A unique characteristic of this system is that it has dual scanning probe heads that are independently controlled, which enable illumination and detection with sub-wavelength spatial resolution. We know of no instrument suited to these purposes, which was being manufactured in the United States at the time of order of this instrument.

Docket Number: 10–028.

Applicant: Boston College, Chestnut Hill, MA 02467.

Instrument: Infrared Mirror Furnace 4 Mirror Furnace.

Manufacturer: Crystal Systems Corp., Japan.

Intended Use: See notice at 75 FR 34095, June 16, 2010.

Reasons: A unique characteristic of this furnace is that it can synthesize extremely high quality crystals without crucible contact during growth, which prevents contamination. The instrument also allows for visual monitoring of the crystals during its growth and nucleation and can achieve heating gradients greater than 1500 Celsius per centimeter. We know of no instrument suited to these purposes, which was being manufactured in the United States at the time of order of this instrument.

Dated: July 13, 2010.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. 2010–17535 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1692]

Expansion of Foreign-Trade Zone 163, Ponce, Puerto Rico, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, CODEZOL, C.D., grantee of Foreign-Trade Zone 163, submitted an application to the Board for authority to expand existing Site 1 to include additional acreage and to expand the zone to include a site at the ProCaribe Industrial Park (Site 11) in Penuelas, Puerto Rico, adjacent to the Ponce Customs and Border Protection port of entry (FTZ Docket 53–2009, filed 11/23/09);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 62747, 12/1/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 163 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to a sunset provision that would terminate authority on June 30, 2015, for Site 11 if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 8 day of July 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–17542 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1693]

Expansion of Foreign-Trade Zone 163 Ponce, Puerto Rico, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, CODEZOL, C.D., grantee of Foreign-Trade Zone 163, submitted an application to the Board for authority to expand its zone to include a site at the Yaucono Industrial Park (Site 12) in Ponce, Puerto Rico, within the Ponce Customs and Border Protection port of entry (FTZ Docket 17–2010, filed 3/8/10);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 12730–12731, 3/17/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report (including the renumbering of Rio Piedras Distribution Center located within existing Site 3 as Site 13), and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 163 is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to a sunset provision that would terminate authority on June 30, 2015, for Site 12 if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 8 day of July 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–17540 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–953)

Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") has determined that countervailable subsidies are being provided to producers and exporters of narrow woven ribbons with woven selvedge from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Holland and Anna Flaaten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1279 and (202) 482–5156, respectively.

SUPPLEMENTARY INFORMATION:

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2008, through December 31, 2008.

Case History

The following events have occurred since the publication of the preliminary determination in the **Federal Register** on December 14, 2009. *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 66090 (December 14, 2009) ("*Preliminary Determination*").

On December 16, 2009, the Department issued a supplemental questionnaire to the Government of China ("GOC") which responded on January 6, 2010. From January 18, 2010, to January 20, 2010, the Department conducted verification of the questionnaire responses submitted by the GOC and mandatory respondent Yama Ribbons and Bows Co., Ltd. ("Yama"). See Memoranda from Scott Holland and Anna Flaaten, International Trade Analysts, to Susan H. Kuhbach,

Office Director, AD/CVD Operations, Office 1, "Verification Report of the Xiamen Municipal Government of the People's Republic of China" (March 17, 2010) and "Verification Report: Yama Ribbons and Bows Co., Ltd." (March 17, 2010). On January 20, 2010, the Department issued a post–preliminary analysis regarding additional subsidy programs. *See* Memorandum from Scott Holland and Anna Flaaten, International Trade Analysts, to Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, "Post–Preliminary Findings for Additional Subsidy Programs" (January 20, 2010). On February 18, 2010, the Department extended the due date for the final determination by 60 days in accordance with its alignment of the final countervailing duty (CVD) determination with the final determination in the companion antidumping duty investigation of narrow woven ribbon with woven selvedge from the PRC. *See Preliminary Determination*, 74 FR at 66092; *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244, 7245–46 (February 18, 2010).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, 2010, through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. The revised deadline for the final determination of this investigation was thus extended to July 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorms," dated February 12, 2010. However, July 10, 2010, falls on a Saturday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of* "*Next Business Day*" *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final determination became July 12, 2010.

On March 18, 2010, the Department postponed the briefing schedule as described in the *Preliminary Determination* until further notice to allow the Department to consider an issue which may have required a post–preliminary analysis. On May 17, 2010, the Department set the Briefing and Hearing Schedule and invited interested parties to comment on the denominator used in the Department's calculation in the *Preliminary Determination* of this case.

The Department received case briefs from the GOC, Yama, and Bestpak Gifts & Crafts Co. Ltd., a Chinese producer and exporter of the subject merchandise, on June 1, 2010, and a rebuttal brief from the petitioner, Berwick Offray, LLC and its wholly–owned subsidiary Lion Ribbons Company, Inc. (collectively, "Petitioner"), on June 7, 2010. A public hearing was held on June 14, 2010, where the same parties presented their arguments.

Scope of the Investigation

The merchandise subject to the investigation is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man–made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the investigation may:

- also include natural or other non–man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single–faced satin, double–faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut–edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the investigation include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this investigation.

Excluded from the scope of the investigation are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull–bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States ("HTSUS"), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut–to-length or cut–to-shape, having a length (when measured across the longest edge–to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut–edge narrow woven ribbons formed by cutting broad woven

fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono–bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non–subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non–subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non–subject merchandise as a working component of such non–subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non–subject merchandise as a working component that holds or packages such non–subject merchandise or attaches packaging or labeling to such non–subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non–subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of marrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this investigation is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the *Preliminary Determination* in this case, we received a request from certain retailers of narrow woven ribbons that the Department modify the scope of the investigation to exclude narrow woven ribbons included in kits or sets in "*de minimis*" amounts. Because of concerns over whether the proposed scope exclusion language would be administrable, we declined to modify the scope in the companion antidumping duty preliminary determinations, and we did not use the language suggested by these retailers or the alternative language proposed by Petitioner. *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236, 7240 (February 18, 2010) and *Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244, 7246 (February 18, 2010).

Following the preliminary determinations, on March 24, 2010, and June 3, 2010, Petitioner submitted additional language for this scope exclusion. Having determined that the language contained in Petitioner's June 3, 2010, submission is administrable, we have incorporated this language in exclusion 13. *See* the "Scope of Investigation" section, above.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the "Act"), section 701(a)(2) of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On September 8, 2009, the ITC issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of narrow woven ribbons with woven selvedge from the PRC. *See Narrow Woven Ribbons With Woven Selvedge From China and Taiwan*, 74 FR 46224 (September 8, 2009) and *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan*, Investigation Nos. 701–TA–467 and 731–TA–1165, USITC Pub. 4099 (August 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, entitled "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China" (July 12, 2010) (hereafter "Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 in the main building of the Commerce Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and have continued to use adverse inferences in accordance with sections 776(a) and (b) of the Act to determine the countervailable subsidy rates for Changtai Rongshu Co., Ltd. ("Changtai Rongshu"), which is one of the two companies selected to respond to our questionnaires. In addition, consistent with our findings in the post–preliminary analysis regarding additional subsidy programs, we have continued to rely on facts available and have continued to use adverse inferences in accordance with sections

776(a) and (b) of the Act to find a grant to Yama under the Xiamen Municipal Science and Technology Program to be specific under section 771(5A)(D)(iii) of the Act. A full discussion of our decision to apply adverse facts available is presented in the Decision Memorandum in the section "Use of Facts Otherwise Available and Adverse Facts Available."

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for Yama and Changtai Rongshu. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted–average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this case, the all others rate is based on Yama's calculated rate.

Exporter/manufacturer	Net subsidy rate
Yama Ribbons and Bows Co., Ltd.	1.56
Changtai Rongshu Textile Co., Ltd.	117.95
All Others	1.56

Also, in accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after April 13, 2010, but to continue the suspension of liquidation of entries made from December 14, 2010, through April 12, 2010.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order ("APO"), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

General Issues

Comment 1: Double Counting/Overlapping Remedies

Company–Specific Issues

Comment 2: Xiamen Municipal Science and Technology Grant Program - Specificity

Comment 3: International Market Developing Fund Grants for SMEs - Specificity

Comment 4: Calculation of Yama's Sales Denominator

AFA

Comment 5: Inclusion of Terminated Programs in the AFA Rate Calculation

All–Others Rate

Comment 6: All–Others Rate Calculation

[FR Doc. 2010–17541 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–583–844

Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We determine that imports of narrow woven ribbons with woven selvedge (NWR) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted–average dumping margins for the investigated companies are listed below in the section entitled "Final Determination Margins."

EFFECTIVE DATE: July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 and (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2010, the Department published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty investigation of NWR from Taiwan. *See Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236 (Feb. 18, 2010) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

In February 2010, the Department selected certain unaffiliated companies which supplied ribbon to Dear Year Brothers Mfg. Co., Ltd. (Dear Year) and Shienq Houng Group (*i.e.*, Hsien Chan Enterprise Co., Ltd., Novelty Handicrafts Co., Ltd., and Shienq Huong Enterprise Co., Ltd. (collectively "Shienq Huong")), and we requested that these unaffiliated suppliers respond to section D of the questionnaire (*i.e.*, the section relating to cost of production (COP) and

constructed value) with respect to the merchandise supplied to Dear Year and Shienq Huong. In February and March 2010, Dear Year's unaffiliated supplier informed the Department that it did not produce NWR but merely purchased and resold it, while Shienq Houng's unaffiliated ribbon suppliers provided responses to section D of the questionnaire.

In March 2010, we verified the questionnaire responses of three respondents in this case, Dear Year, Roung Shu Industry Corporation (Roung Shu), and Shienq Houng, in accordance with section 782(i) of the Act. Also in this month, we received additional comments on the scope of this investigation from the petitioner.[1] Finally in March 2010, we issued supplemental questionnaires to Shienq Huong's unaffiliated suppliers, and we received responses to these supplemental questionnaires in April 2010.

Also in April 2010, Dear Year, Roung Shu, and the petitioner submitted their main case briefs (*i.e.*, related to all issues except those associated with the responses received from the unaffiliated suppliers noted above). We also received rebuttal briefs in April 2010 from the petitioner and the three respondents. In April 2010, we issued additional supplemental questionnaires to Shienq Huong's unaffiliated suppliers. We received responses to these supplemental questionnaires in April and May 2010.

In May and June 2010, the petitioner, Dear Year, and Shienq Huong submitted supplemental case and rebuttal briefs specifically raising issues with regards Dear Year's and Shienq Huong's unaffiliated suppliers of NWR.

In June 2010, the petitioner provided revised scope exclusion language relating to NWR included in kits. For further discussion, see the "Scope Comments" section, below. Also in June 2010, the Department held a public hearing at the request of the petitioner, Dear Year, and Shienq Huong.

Period of Investigation

The period of investigation (POI) is July 1, 2008, through June 30, 2009.

Scope of Investigation

The merchandise subject to the investigation is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man–made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the investigation may:

- also include natural or other non–man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single–faced satin, double–faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- consist of such ribbons affixed to like ribbon and/or cut–edge woven ribbon, a configuration also known as an "ornamental trimming;"
- be wound on spools; attached to a card; hanked (*i.e.*, coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the investigation include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this investigation.

Excluded from the scope of the investigation are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull–bows" (*i.e.*, an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.*, filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut–to-length or cut–to-shape, having a length (when measured across the longest edge–to-edge span) not exceeding 8 centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut–edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono–bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (*i.e.*, fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric) ;

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non–subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non–subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non–subject merchandise as a working component of such

[1] The petitioner in this investigation is Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc.

non–subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non–subject merchandise as a working component that holds or packages such non–subject merchandise or attaches packaging or labeling to such non–subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non–subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of marrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this investigation is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, we received a request from certain retailers of NWR that the Department modify the scope of the investigation to exclude NWR included in kits or sets in "*de minimis*" amounts. Because of concerns over whether the proposed scope exclusion language would be administrable, we declined to modify the scope in the *Preliminary Determination*, and we did not use the language suggested by these retailers or the alternative language proposed by the petitioner. *See Preliminary Determination*, 75 FR at 7240.

Following the preliminary determination, on March 24, 2010, and June 3, 2010, the petitioner submitted additional language for this scope exclusion. Having determined that the language contained in the petitioner's June 3, 2010, submission is administrable, we have incorporated this language in exclusion 13. *See* the "Scope of Investigation" section, above.

Unaffiliated Supplier Costs

In our *Preliminary Determination*, we determined that the companies weaving the ribbon are the producers of the NWR subject to this investigation. *See Preliminary Determination*, 75 FR at 7242. After analyzing the information on the record with respect to this issue, as well as the comments received from interested parties, we continue to find that the weaver is the producer of NWR. *See* the "Issues and Decision Memorandum" (Decision Memorandum) from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Import Administration, to Ronald K. Lorentzen, Deputy Secretary for Import Administration, dated July 12, 2010, at Comments 19 and 20 for further discussion regarding this determination.

As noted above, from February through May 2010, we received responses to our requests for cost information from certain of Dear Year and Shienq Huong's unaffiliated suppliers of purchased ribbon. With respect to Dear Year, the response from Dear Year's supplier revealed that the supplier did not weave the merchandise under consideration, but rather it merely purchased the ribbon from another company and then resold it to Dear Year. Because insufficient time existed to request additional information from the upstream supplier prior to the final determination, as facts available for purposes of the final determination, we are relying on Dear Year's costs of acquisition for the purchased NWR in lieu of actual production costs from the weavers as such information is not contained in the record of this proceeding. For further discussion, see Comment 19 in the Decision Memorandum.

With respect to Shienq Huong's unaffiliated suppliers, these companies provided certain cost information but informed the Department that they did not maintain records at a sufficient level of detail to provide POI product–specific costs. Because the submitted costs are not POI product–specific costs, we are unable to use them in our analysis for the final determination. Therefore, as with Dear Year, as facts available for purposes of the final determination, we are relying on Shienq Huong's costs of acquisition for the purchased NWR ribbon costs in lieu of actual costs of production from the weaver, as the weaver is unable to provide such costs on a sufficiently specific basis for use in the Department's calculations. For further discussion, see Comment 20 in the Decision Memorandum.

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Here, we lack information necessary to determine the unaffiliated suppliers' actual costs and must, therefore, rely upon facts available. Although we appropriately requested the unaffiliated suppliers' costs, the suppliers did not maintain records at a sufficient level of detail to provide such costs in a manner sufficiently detailed for use in the Department's margin calculations; therefore, we are relying on the acquisition prices for purchased ribbon as facts available because they are product–specific and constitute the only useable data available with respect to purchased ribbon. However, if an antidumping duty order is issued in this proceeding, we will require product–specific costs from unaffiliated suppliers, if requested. This constitutes notice to the weavers of NWR that information must be maintained to allow the reporting of costs on a product–specific basis.

Cost of Production

As discussed in the preliminary determination, we conducted an investigation to determine whether the respondents made comparison market sales of the foreign like product during the POI at prices below their COP within the meaning of section 773(b) of the Act. *See Preliminary Determination*, 75 FR 7236 (Feb. 18, 2010). For this final determination, we performed the cost test following the same methodology as in the *Preliminary Determination.*

We found that 20 percent or more of each respondent's sales of a given product during the POI were at prices

less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1)-(2) of the Act.

Therefore, for purposes of this final determination, we found that each respondent made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales and used the remaining sales as the basis for determining normal value for each respondent pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by the respondents for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the respondents.

Continuation of Suspension of Liquidation

Pursuant to 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Taiwan, entered, or withdrawn from warehouse, for consumption on or after February 18, 2010, the date of publication of the preliminary determination in the **Federal Register**. CBP shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice. For Dear Year and Shienq Huong, because their estimated weighted–average final dumping margins are zero, we are not directing CBP to suspend liquidation of entries of NWR produced and exported by these companies.

Finally, we note that neither Dear Year nor Shienq Huong has disclosed for the public record the names of their unaffiliated suppliers. Therefore, upon public disclosure of this information to the Department, we will notify CBP that Dear Year's and Shienq Huong's exports of merchandise produced by these unaffiliated suppliers have LTFV investigation margins of zero and thus are excluded from any order resulting from this investigation. Until and unless such public disclosure is made, we will notify CBP that all entries of merchandise produced by Dear Year's and Shienq Huong's unaffiliated suppliers will be subject to the "all others" rate established in this proceeding.

Final Determination Margins

The weighted–average dumping margins are as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Dear Year Brothers Mfg. Co., Ltd.	0.00
Roung Shu Industry Corporation	4.37
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd.	0.00
All Others	4.37

"All Others" Rate

In accordance with section 735(c)(5)(A) of the Act, we have based the "All Others" rate on the weighted average of the dumping margins calculated for the exporters/manufacturers investigated in this proceeding. The "All Others" rate is calculated exclusive of all de minimis margins and margins based entirely on AFA.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: July 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

General Issues

1. Targeted Dumping
2. The Appropriate Unit of Measure On Which to Base Sales and Cost Data
3. How to Define the Product Characteristic "Color"
4. Display Unit Costs

Company–Specific Issues

5. Date of Shipment for Dear Year
6. Dear Year's Sales of Traded Goods
7. The Treatment of a Relabeling Billing Adjustment for Dear Year
8. The Treatment of Dear Year's "Combination" Ribbons

9. Clerical Error in Dear Year's Preliminary Dumping Margin
10. Dear Year's Sample Sales
11. Reallocation of Variable Overhead for Dear Year
12. Variables Names in Dear Year's Cost Database
13. The Treatment of the Product Characteristic "Width" for Roung Shu
14. Warranty Expenses for Roung Shu
15. Roung Shu's Reporting of the Costs Associated with Different Colors of NWR

16. Financial Expenses for Roung Shu
17. Financial Expenses for Shienq Huong

18. Depreciation Expense for Shienq Huong

Issues Related to Unaffiliated Suppliers

19. Dear Year's Unaffiliated Suppliers' Cost of Production (COP)
20. Shienq Huong's Unaffiliated Suppliers' COP
21. Assigning Combination Rates to Dear Year and Shienq Huong

[FR Doc. 2010–17538 Filed 7–16–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 19, 2010.

SUMMARY: On February 18, 2010, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of narrow woven ribbons with woven selvedge ("narrow woven ribbons") from the People's Republic of China ("PRC").[1] We invited interested parties to comment on our *Preliminary Determination.* Based on our analysis of the comments we received, we have made changes from the *Preliminary Determination.* We determine that narrow woven ribbons from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("Act"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Zhulieta Willbrand or Karine Gziryan, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3147 and (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The period of investigation is January 1, 2009, through June 30, 2009. The Department published its preliminary determination of sales at LTFV and postponement of the final determination on February 18, 2010.[2] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final determination of this investigation is now July 12, 2010.[3]

Between March 8, 2010 and March 12, 2010, the Department conducted verification of mandatory respondent Yama Ribbons and Bows Co., Ltd. ("Yama").[4]

On April 20, 2010, the Department received case briefs from: Berwick Offray LLC and its wholly owned subsidiary Lion Ribbon Company, Inc. ("Petitioner"); Yama; and Yangzhou Bestpak Gifts & Crafts Co., Ltd. ("Bestpak"). On April 26, 2010, the Department received rebuttal briefs from Petitioner, Yama, and Bestpak.

On June 14, 2010, the Department issued a memorandum to all interested parties requesting comment on two possible Harmonized Tariff Schedule ("HTS") numbers (*i.e.,* 6310.10.90 and 6310.90.90) that could be used as the surrogate value for scrap ribbon and scrap yarn.[5] On June 18, 2010, we received comments from Yama and Petitioner.

On June 14, 2010, in response to the U.S. Court of Appeals for the Federal Circuit's decision in *Dorbest Limited et al.* v. *United States,* 2009–1257, –1266 (May 14, 2010) ("*Dorbest*"), the Department issued a memorandum to inform all interested parties that the Department would reconsider its valuation of the labor wage rate, and to permit parties to comment on this issue.[6] On June 21, 2010, we received comments from Yama and Petitioner. Additionally, on June 15 and 22, 2010, the Department issued a memorandum adding additional export data to the record related to the Department's determination of the surrogate value for labor.[7] On June 21, 2010, Petitioner and Yama submitted comments regarding the wage rate issue. Further, on June 22, 2010, the Department issued another memorandum adding additional export data to the record related to the Department's determination of the surrogate value for labor.[8] We received no additional comments. On July 1, 2010, the Department placed further data on the record regarding the wage rate issue.[9] No party submitted comments.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests, are addressed in the "Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Issues and Decision Memorandum for the Final Determination" ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit, Room 1117 of the main Commerce building, and is accessible on the World Wide Web at *http://*

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 7244 (February 18, 2010) ("*Preliminary Determination*").

[2] *See Preliminary Determination.*

[3] *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

[4] *See* the "Verification" section below for additional information.

[5] *See* Memorandum to The File, Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Surrogate Value for Scrap Yarn and Scrap Ribbon, dated June 14, 2010.

[6] *See* Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Export Data, dated June 14, 2010.

[7] *See* Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Additional Export Data, dated June 15, 2010.

[8] *See* Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Additional Export Data, dated June 22, 2010.

[9] *See* Memorandum to The File, Antidumping Duty Investigation of Narrow Woven Ribbons with Woven Selvedge from the People' Republic of China: Data on Labor Wage, dated July 1, 2010.

trade.gov/ia/index.asp. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

1. For the final determination, we have included a freight expense to transport liquid petroleum gas from the supplier to Yama's factory.[10]

2. In the *Preliminary Determination,* 75 FR at 7249–50, we stated that for certain misreported packing materials' factors of production ("FOPs") as facts available, we applied a simple average consumption rate for certain packing materials. At verification, we examined these packing materials. For the final determination, we have determined to use Yama's reported consumption rates for all its packing materials.[11]

3. We have recalculated the surrogate value for scrap using World Trade Atlas data for HTS number 6310.90.90.[12]

4. Pursuant to a recent decision by the U.S. Court of Appeals for the Federal Circuit, we have calculated a revised hourly wage rate to use in valuing Yama's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.[13]

5. For the final determination, we have included a new exclusion (*i.e.,* exclusion 13) in the scope of investigation. *See* "Scope of Investigation" section, below.

Scope of Investigation

The merchandise subject to the investigation is narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the investigation may:

- Also include natural or other non-man-made fibers;
- Be of any color, style, pattern, or weave construction, including but not limited to single-faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- Have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- Have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- Have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- Have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;
- Have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;
- Consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"
- Be wound on spools; attached to a card; hanked (*i.e.,* coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or
- Be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the investigation include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this investigation.

Excluded from the scope of the investigation are the following:

(1) Formed bows composed of narrow woven ribbons with woven selvedge;

(2) "Pull-bows" (*i.e.,* an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) Narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (*i.e.,* filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States ("HTSUS"), Section XI, Note 13) or rubber thread;

(4) Narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) Narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) Narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) Cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) Narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) Narrow woven ribbons constructed from pile fabrics (*i.e.,* fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) Narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) Narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) Narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) Narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches,

[10] *See* Final Analysis Memorandum for Yama Ribbons and Bows Co. Ltd., dated July 12, 2010 ("Yama's Analysis Memo").

[11] *See* Yama's Analysis Memo.

[12] *See* Yama's Analysis Memo.

[13] *See* Issues and Decision Memorandum at Comment 8.

none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to this investigation is classifiable under the HTSUS categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under investigation is dispositive.

Scope Comments

Prior to the preliminary determination in this case, we received a request from certain retailers of narrow woven ribbons that the Department modify the scope of the investigation to exclude narrow woven ribbons included in kits or sets in "*de minimis*" amounts. Because of concerns over whether the proposed scope exclusion language would be administrable, we declined to modify the scope in the *Preliminary Determination,* and we did not use the language suggested by these retailers or the alternative language proposed by the petitioner. *See Preliminary Determination,* 75 FR at 7240.

Following the preliminary determination, on March 24, 2010, and June 3, 2010, the petitioner submitted additional language for this scope exclusion. Having determined that the language contained in the petitioner's June 3, 2010, submission is administrable, we have incorporated this language in exclusion 13.[14]

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Yama for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.[15]

Surrogate Country

In the *Preliminary Determination,* we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the FOPs.[16] We received no comments on this issue after the *Preliminary Determination,* and we have made no changes to our findings with respect to the selection of a surrogate country for the final determination.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[17]

In the *Preliminary Determination,* we found that the following companies demonstrated eligibility for separate-rate status: Beauty Horn Investment Limited; Fujian Rongshu Industry Co., Ltd.; Guangzhou Complacent Weaving Co., Ltd.; Ningbo MH Industry Co., Ltd.; Ningbo V.K. Industry & Trading Co., Ltd.; Stribbons (Guangzhou) Ltd.; Sun Rich (Asia) Limited; Tianjin Sun Ribbon Co., Ltd.; Weifang Dongfang Ribbon Weaving Co., Ltd.; Weifang Yu Yuan Textile Co., Ltd.; Xiamen Yi He Textile Co., Ltd; and Bestpak (collectively, the "Separate Rate Applicants"). Since the publication of the *Preliminary Determination,* no party has commented on the eligibility of the Separate Rate Applicants for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by the Separate Rate Applicants demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Thus, we continue to find that the Separate Rate Applicants are eligible for separate-rate status.

Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").[18] In this case, because there are no rates other than *de minimis* or those based on AFA, we have determined to take a simple average of the AFA rate assigned to the PRC-wide entity and the *de minimis* rate calculated for Yama as a reasonable method for purposes of determining the rate assigned to the Separate Rate Applicants.[19] We note that this methodology is consistent with the Department's past practice.[20]

The PRC-Wide Rate

In the *Preliminary Determination,* we found that certain PRC exporters/producers did not demonstrate that they operate free of government control over their export activities and did not respond to the Department's request for information.[21] Thus, we treated these PRC exporters/producers as part of the PRC-wide entity and found that the PRC-wide entity did not respond to our requests for information.[22] No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination.* Additionally, in the *Preliminary Determination,* we determined that because Ningbo Jintian Import & Export Co., Ltd. ("Ningbo Jintian") (*i.e.,* a mandatory respondent) failed to submit responses to the Department's questionnaires, the Department has no basis upon which to grant Ningbo Jintian a separate rate. Accordingly, in the *Preliminary Determination,* we determined to treat Ningbo Jintian as part of the PRC-wide entity.[23] We received no comments on this determination.

Section 776(a)(2) of the Act provides that, if an interested party (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C)

[14] *See* "the Scope of Investigation" section, above.

[15] *See* April 13, 2010 Memorandum to the File from Karine Gziryan and Zhulieta Willbrand, International Trade Compliance Specialists, AD/CVD Operations, Office 4, "Verification of the Sales and Factors Responses of Yama Ribbons and Bows Co., Ltd. in the Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China" at 34 and Exhibit 22.

[16] *See Preliminary Determination.*

[17] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

[18] *See* section 735(c)(5)(A) of the Act.

[19] *See* section 735(c)(5)(B) of the Act.

[20] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light-Walled Rectangular Pipe and Tube From the Republic of Korea,* 73 FR 5794, 5800 (January 31, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea,* 73 FR 35655 (June 24, 2008); *see also* "Corroboration" section below.

[21] *See Preliminary Determination,* 75 FR at 7250.

[22] *See id.*

[23] *See id.*

significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, we continue to find it appropriate to base the PRC-wide rate on facts available. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[24] We determine that, because the PRC-wide entity did not respond to our requests for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only Separate Rate Applicants have overcome that presumption, we are applying a single antidumping rate (*i.e.,* the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate.[25] The PRC-wide entity rate applies to all entries of subject merchandise except for entries from Yama and the Separate Rate Applicants.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."[26] To "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[27]

The AFA rate that the Department used is drawn from the petition, as adjusted to reflect the CAFC's decision in *Dorbest. See* Issues and Decision Memorandum at Comment 1. Petitioner's methodology for calculating the United States price and normal value ("NV") in the petition is discussed in the *Initiation Notice.*[28] In the *Preliminary Determination,* we assigned to the PRC-wide entity the margin alleged in the petition, *i.e.,* 247.65 percent.[29] For the final determination, we have continued to assign to the PRC-wide entity the rate of 247.65 percent. To corroborate the AFA margin that we have selected, we compared it to the model-specific margins we found for the participating mandatory respondent, Yama. We found that the margin of 247.65 percent has probative value because it is in the range of Yama's model-specific margins.[30] Accordingly, we find that the rate of 247.65 percent is corroborated within the meaning of section 776(c) of the Act.[31]

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[32] This practice is described in *Policy Bulletin 05.1,* available at *http://ia.ita.doc.gov/.*

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation. (Emphasis in original).

Final Determination Margins

The Department determines that the following dumping margins exist for the period January 1, 2009, through June 30, 2009:

[24] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part,* 72 FR 14078, 14079 (March 26, 2007), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2005–2006 Administrative Review,* 72 FR 70302 (December 11, 2007). *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"), H.R. Doc. No. 103–316, Vol. 1 (1994), at 870.

[25] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000).

[26] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

[27] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[28] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 74 FR 39291 (August 6, 2009) ("Initiation Notice")

[29] *See Preliminary Determination,* 75 FR at 7251.

[30] *See* Yama's Analysis Memo.

[31] *See* Issues and Decision Memorandum at Comment 12; *see also* July 12, 2010 Memorandum to the File from Karine Gziryan, International Trade Analyst, AD/CVD Operations, Office 4, "Antidumping Investigation of Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Proprietary Memorandum regarding Corroboration".

[32] *See Initiation Notice,* 74 FR at 39297.

Exporter	Producer	Weighted-average percent margin
Yama Ribbons and Bows Co., Ltd	Yama Ribbons and Bows Co., Ltd	0
Beauty Horn Investment Limited	Tianjin Sun Ribbon Co., Ltd	123.83
Fujian Rongshu Industry Co., Ltd	Fujian Rongshu Industry Co., Ltd	123.83
Guangzhou Complacent Weaving Co., Ltd	Guangzhou Complacent Weaving Co., Ltd	123.83
Ningbo MH Industry Co., Ltd	Hangzhou City Linghu Jiacheng Silk Ribbon Co., Ltd	123.83
Ningbo V.K. Industry & Trading Co., Ltd	Ningbo Yinzhou Jinfeng Knitting Factory	123.83
Stribbons (Guangzhou) Ltd	Stribbons (Guangzhou) Ltd	123.83
Stribbons (Guangzhou) Ltd	Stribbons (Nanyang) MNC Ltd	123.83
Sun Rich (Asia) Limited	Dongguan Yi Sheng Decoration Co., Ltd	123.83
Tianjin Sun Ribbon Co., Ltd	Tianjin Sun Ribbon Co., Ltd	123.83
Weifang Dongfang Ribbon Weaving Co., Ltd	Weifang Dongfang Ribbon Weaving Co., Ltd	123.83
Weifang Yu Yuan Textile Co., Ltd	Weifang Yu Yuan Textile Co., Ltd	123.83
Xiamen Yi He Textile Co., Ltd	Xiamen Yi He Textile Co., Ltd	123.83
Yangzhou Bestpak Gifts & Crafts Co., Ltd	Yangzhou Bestpak Gifts & Crafts Co., Ltd	123.83
PRC-wide Entity*		247.65

* (Including Ningbo Jintian Import & Export Co., Ltd.).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of narrow woven ribbons from the PRC, as described in the "Scope of Investigation" section, above, entered, or withdrawn from warehouse, for consumption on or after February 18, 2010, the date of publication of the *Preliminary Determination* in the **Federal Register.** The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate the Department has determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

Additionally, as the Department has determined in its companion countervailing duty ("CVD") final determination of narrow woven ribbons from the PRC (dated concurrently with this notice) that the product under investigation, exported and produced by Yama, benefitted from an export subsidy, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2004). Therefore, for the separate rate respondents, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above adjusted for the export subsidy rate determined in the CVD final determination (*i.e.,* International Market Development Fund Grants for Small and Medium Enterprises). The adjusted cash deposit rate for the separate rate respondents (as listed above in the "Final Determination Margins" section, above) is 123.44 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department notified the U.S. International Trade Commission ("ITC") of its final determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issues for Final Determination

Comment 1: Whether the Department should recalculate the petition margin with the preliminary surrogate value for labor
Comment 2: Whether to apply a scrap offset in deriving Yama's normal value
Comment 3: Whether to set additional processing revenue to zero for all sales and cap freight revenue
Comment 4: Whether to include freight expenses for the input Liquid Petroleum Gas ("LPG")
Comment 5: Whether to deduct Yama's bank charges from U.S. price
Comment 6: Whether to apply Adverse Facts Available for some of Yama's sales
Comment 7: Whether to apply Facts Available to estimate commissions on Yama's U.S. Sales
Comment 8: Whether the Department should revise its labor rate calculation
Comment 9: Whether to assign Bestpak the calculated margin assigned to Yama as its separate rate
Comment 10: Whether to select an additional

respondent
Comment 11: Whether to calculate Bestpak's separate rate using its quantity and value information
Comment 12: Whether the AFA rate was sufficiently corroborated

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 15, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. This review covers 159 producers/exporters [1] of the subject merchandise to the United States. The period of review (POR) is February 1, 2008, through January 31, 2009.

After analyzing the comments received, we have made no changes in the margin calculations. Therefore, these final results do not differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

Finally, we have determined to revoke the antidumping duty order with respect to shrimp from India produced and exported by Devi Sea Foods Limited (Devi) and to rescind the review with respect to 41 firms.

DATES: *Effective Date:* July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 159 producers/exporters. The respondents which the Department selected for individual examination are Devi, Falcon Marine Exports Limited (Falcon), and the Liberty Group.[2] The respondents which were not selected for individual review are listed in the "Final Results of Review" section of this notice.

On March 15, 2010, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on shrimp from India. *See Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Notice of Intent to Rescind Review in Part, and Notice of Intent to Revoke Order in Part,* 75 FR 12175 (Mar. 15, 2010) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results* of review. In April 2009, we received case and rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the Petitioner) and the American Shrimp Processors Association (ASPA)/the Louisiana Shrimp Association (LSA). We also received a case brief from the Liberty Group and a rebuttal brief from Devi.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[3] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24,

[1] Collapsed entities are treated as one producer/exporter.

[2] The Liberty Group consists of the following companies: Devi Marine Food Exports Private Limited, Kader Exports Private Limited, Kader Investment and Trading Company Private Limited, Liberty Frozen Foods Private Limited, Liberty Oil Mills Ltd., Premier Marine Products, and Universal Cold Storage Private Limited (collectively, "the Liberty Group").

[3] "Tails" in this context means the tail fan, which includes the telson and the uropods.

0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Period of Review

The POR is February 1, 2008, through January 31, 2009.

Partial Rescission

In the *Preliminary Results,* we stated our intention to rescind the review with respect to the following companies, which reported to the Department that they had no shipments during the POR:

(1) Abad Fisheries
(2) Allanna Frozen Foods Pvt. Ltd.
(3) Allansons Ltd.
(4) Amulya Sea Foods
(5) Anjaneya Seafoods
(6) Baby Marine (Eastern) Exports
(7) Baby Marine Exports
(8) Baby Marine International
(9) Baby Marine Products
(10) Baby Marine Sarass
(11) Baraka Overseas Traders
(12) Blue Water Foods & Exports P. Ltd.
(13) BMR Exports
(14) Coreline Exports
(15) Frigerio Conserva Allana Ltd.
(16) G A Randerian Ltd.
(17) G.K S Business Associates Pvt. Ltd.
(18) Hiravata Ice & Cold Storage
(19) Hiravati Exports Pvt. Ltd.
(20) Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)
(21) Indian Aquatic Products
(22) Innovative Foods Limited
(23) Interseas
(24) K R M Marine Exports Ltd.
(25) K V Marine Exports
(26) Kalyanee Marine
(27) L. G Seafoods
(28) Lewis Natural Foods Ltd.
(29) Libran Cold Storages (P) Ltd.
(30) Lourde Exports
(31) Sanchita Marine Products P Ltd
(32) Silver Seafood
(33) Sterling Foods
(34) Veejay Impex
(35) Veraval Marines & Chemicals P Ltd

Further, we stated our intention to rescind the review for the following firms because we initiated multiple reviews for these companies:[4] (1) Devi Fisheries Limited; (2) Premier Marine Products; (3) Ram's Assorted Cold Storage Ltd.; (4) Satya Sea Foods Pvt. Limited; and (5) Usha Sea Foods. We stated our intention to rescind the review for Calcutta Seafoods because this company no longer exists and is now doing business as Calcutta Seafoods Pvt. Ltd.

Since the *Preliminary Results* we have received no comments regarding our stated intention to rescind the review for each of the firms listed above. Therefore, the Department is rescinding this review with respect to the 41 firms listed above.

Duty Absorption

In our *Preliminary Results,* we preliminarily found that there was no duty absorption applicable to Devi's U.S. sales because we preliminarily determined that there is no dumping margin with respect to Devi's U.S. sales during the current administrative review. *See Preliminary Results,* 75 FR at 12179–12180. Because we continue to find that there is no dumping margin with respect to Devi's U.S. sales during this POR, we also continue to find that there is no duty absorption applicable to Devi's U.S. sales.

Determination To Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request to revoke an order in part, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i). *See also Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part,* 67 FR 69719, 69720 (Nov. 19, 2002).

We have determined that the request from Devi meet all of the criteria for revocation under 19 CFR 351.222. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our final margin calculations show that Devi sold shrimp at not less than NV during the current review period. In addition, Devi sold shrimp at not less than NV in the two previous administrative reviews (*i.e.,* Devi's dumping margins were zero or *de minimis*). *See Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33409, 33411 (July 13, 2009) and *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 40492, 40495 (July 15, 2008). Also, we find that application of the antidumping duty order to Devi is no longer warranted because: (1) Devi has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (2) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we find that Devi qualifies for revocation of the antidumping duty order on shrimp from India under 19 CFR 351.222(b)(2). Accordingly, we are revoking the order with respect to subject merchandise produced and exported by Devi. For further discussion, see the Issues and Decision Memorandum (Decision Memo) accompanying this notice at Comment 3.

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced and exported by Devi, and are entered, or withdrawn from warehouse, for consumption on or after February 1, 2009. The Department will order the suspension of liquidation lifted for all such entries and will instruct U.S. Customer and Border Protection (CBP) to release any cash deposits or bonds. The Department will further instruct CBP to refund with interest any cash

[4] We initiated separate administrative reviews for these companies because the petitioner and/or the respondent listed separate addresses for the same company in their review requests. We subsequently clarified the correct addresses for these companies and are rescinding the review with respect to these duplicate company names (*i.e.,* these companies are included in this administrative review only once). *See Preliminary Results,* 75 FR at 12178–12179.

deposits on entries made on or after February 1, 2009.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Devi, Falcon, and the Liberty Group made third country sales of the foreign like product during the POR at prices below their costs of production (COP) within the meaning of section 773(b) of the Act. *See Preliminary Results,* 75 FR at 12182–12183. For these final results, we performed the cost test following the same methodology as in the *Preliminary Results.*

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1)–(2) of the Act.

Therefore, for purposes of these final results, we continue to find that Devi, Falcon, and the Liberty Group made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining NV pursuant to section 773(b)(1) of the Act. For those U.S. sales of subject merchandise for which there were no third country sales in the ordinary course of trade, we compared constructed export prices or export prices, as appropriate, to constructed value in accordance with section 773(a)(4) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review, are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no changes in the margin calculations.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period February 1, 2008, through January 31, 2009:

Manufacturer/Exporter	Percent margin
Devi Sea Foods Limited	0.38 (*de minimis)*
Falcon Marine Exports Limited/KR Enterprises	0.89
Liberty Group (Devi Marine Food Exports Private Limited/Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd. Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited).	4.44

Review-Specific Average Rate Applicable to the Following Companies:[5]

Manufacturer/Exporter	Percent margin
Accelerated Freeze-Drying Co.	2.67
AMI Enterprises	2.67
Anand Aqua Exports	2.67
Ananda Aqua Exports (P) Ltd./Ananda Foods/Ananda Aqua Applications	2.67
Andaman Seafoods Pvt. Ltd.	2.67
Angelique Intl	2.67
Apex Exports	2.67
Asvini Exports	2.67
Asvini Fisheries Private Limited	2.67
Avanti Feeds Limited	2.67
Ayshwarya Seafood Private Limited	2.67
Bhatsons Aquatic Products	2.67
Bhavani Seafoods	2.67
Bijaya Marine Products	2.67
Bluefin Enterprises	2.67
Bluepark Seafoods Pvt. Ltd.	2.67
Britto Exports	2.67
C P Aquaculture (India) Ltd.	2.67
Calcutta Seafoods Pvt. Ltd.	2.67
Capithan Exporting Co.	2.67
Castlerock Fisheries Ltd.	2.67
Chemmeens (Regd)	2.67
Choice Canning Company	2.67
Choice Trading Corporation Private Limited	2.67
Coastal Corporation Ltd.	2.67
Cochin Frozen Food Exports Pvt. Ltd.	2.67
Corlim Marine Exports Pvt. Ltd.	2.67

[5] This rate is based on the simple average of the margins calculation for those companies selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available (AFA).

Manufacturer/Exporter	Percent margin
Devi Fisheries Limited	2.67
Digha Seafood Exports	2.67
Esmario Export Enterprises	2.67
Exporter Coreline Exports	2.67
Five Star Marine Exports Private Limited	2.67
Forstar Frozen Foods Pvt. Ltd.	2.67
Frontline Exports Pvt. Ltd.	2.67
Gadre Marine Exports	2.67
Galaxy Maritech Exports P. Ltd.	2.67
Gayatri Seafoods	2.67
Geo Aquatic Products (P) Ltd.	2.67
Geo Seafoods	2.67
Goodwill Enterprises	2.67
Grandtrust Overseas (P) Ltd.	2.67
GVR Exports Pvt. Ltd.	2.67
Haripriya Marine Export Pvt. Ltd.	2.67
HIC ABF Special Foods Pvt. Ltd.	2.67
Hindustan Lever, Ltd.	2.67
IFB Agro Industries Limited	2.67
Indo Aquatics	2.67
International Freezefish Exports	2.67
ITC Limited, International Business	2.67
ITC Ltd.	2.67
Jagadeesh Marine Exports	2.67
Jaya Satya Marine Exports	2.67
Jaya Satya Marine Exports Pvt. Ltd.	2.67
Jayalakshmi Sea Foods Private Limited	2.67
Jinny Marine Traders	2.67
Jiya Packagings	2.67
Kanch Ghar.	2.67
Kay Kay Exports	2.67
Kings Marine Products	2.67
Koluthara Exports Ltd.	2.67
Konark Aquatics & Exports Pvt. Ltd.	2.67
Magnum Estate Private Limited	2.67
Magnum Export	2.67
Magnum Sea Foods Pvt. Ltd.	2.67
Malabar Arabian Fisheries	2.67
Malnad Exports Pvt. Ltd.	2.67
Mangala Marine Exim India Private Ltd.	2.67
Mangala Sea Products	2.67
Meenaxi Fisheries Pvt. Ltd.	2.67
MSC Marine Exporters	2.67
MTR Foods	2.67
Naga Hanuman Fish Packers	2.67
Naik Frozen Foods	2.67
Naik Seafoods Ltd.	2.67
Navayuga Exports	2.67
Navayuga Exports Ltd.	2.67
Nekkanti Sea Foods Limited	2.67
NGR Aqua International	2.67
Nila Sea Foods Pvt. Ltd.	2.67
Overseas Marine Export	2.67
Paragon Sea Foods Pvt. Ltd.	2.67
Penver Products (P) Ltd.	2.67
Pijikay International Exports P Ltd.	2.67
Pisces Seafood International	2.67
Premier Exports International	2.67
Premier Marine Foods	2.67
Premier Seafoods Exim (P) Ltd.	2.67
Raa Systems Pvt. Ltd.	2.67
Raju Exports	2.67
Ram's Assorted Cold Storage Ltd.	2.67
Raunaq Ice & Cold Storage	2.67
Raysons Aquatics Pvt. Ltd.	2.67
Razban Seafoods Ltd.	2.67
RBT Exports	2.67
Riviera Exports Pvt. Ltd.	2.67
Rohi Marine Private Ltd.	2.67
RVR Marine Products Private Limited	2.67
S A Exports	2.67
S Chanchala Combines	2.67
S & S Seafoods	2.67
Safa Enterprises	2.67

Manufacturer/Exporter	Percent margin
Sagar Foods	2.67
Sagar Grandhi Exports Pvt. Ltd.	2.67
Sagar Samrat Seafoods	2.67
Sagarvihar Fisheries Pvt. Ltd.	2.67
Sai Marine Exports Pvt. Ltd.	2.67
Sai Sea Foods	2.67
Sandhya Aqua Exports	2.67
Sandhya Aqua Exports Pvt. Ltd.	2.67
Sandhya Marines Limited	2.67
Santhi Fisheries & Exports Ltd.	2.67
Satya Seafoods Private Limited	2.67
Sawant Food Products	2.67
Seagold Overseas Pvt. Ltd.	2.67
Selvam Exports Private Limited	2.67
Shippers Exports	2.67
Shroff Processed Food & Cold ZStorage P Ltd.	2.67
Sita Marine Exports	2.67
Sprint Exports Pvt. Ltd.	2.67
Sri Chandrakantha Marine Exports, Ltd.	2.67
Sri Sakkthi Cold Storage	2.67
Sri Sakthi Marine Products P Ltd.	2.67
Sri Satya Marine Exports	2.67
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	2.67
SSF Ltd.	2.67
Star Agro Marine Exports Private Limited	2.67
Sun Bio-Technology Ltd.	2.67
Suryamitra Exim (P) Ltd.	2.67
Suvarna Rekha Exports Private Limited	2.67
Suvarna Rekha Marines P Ltd.	2.67
TBR Exports Pvt Ltd.	2.67
Teekay Marine P. Ltd	2.67
Tejaswani Enterprises	2.67
The Kadalkanny Group (Kadalkanny Frozen Foods, Edhayam Frozen Foods Pvt. Ltd., Diamond Seafoods Exports, and Theva & Company).	2.67
The Waterbase Limited	2.67
Triveni Fisheries P Ltd.	2.67
Uniroyal Marine Exports Ltd.	2.67
Usha Seafoods	2.67
V.S Exim Pvt Ltd.	2.67
Vaibhav Sea Foods	2.67
Victoria Marine & Agro Exports Ltd.	2.67
Vinner Marine	2.67
Vishal Exports	2.67
Wellcome Fisheries Limited	2.67

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Devi, Falcon, and the Liberty Group reported the entered value for all of their U.S. sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer-specific *ad valorem* ratios based on the entered value.

For the companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are *de minimis* or determined entirely on adverse facts available.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Because we have revoked the order with respect to subject merchandise produced and exported by Devi, we will instruct CBP to terminate the suspension of liquidation for imports of such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2009, and to refund all cash deposits collected.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of shrimp from India (except

shipments from Devi, as noted above) entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: 1) the cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent, *de minimis* within the meaning of 19 CFR 351.106(c)(1), the cash deposit will be zero; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147, 5148 (Feb. 1, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 13, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues

1. Offsetting of Negative Margins
2. Using U.S. Customs and Border Protection (CBP) Data for Respondent Selection

Company-Specific Issues

3. Revocation of Devi Sea Foods Ltd. (Devi)
4. Calculation of the U.S. Indirect Selling Expense Ratio for Devi Sea Foods Inc. (Devi USA)
5. Treatment of Quality Claim for the Liberty Group
6. Calculation of Devi's General and Administrative (G&A) Expense Ratio
7. Calculation of Devi's Financial Expense Ratio

[FR Doc. 2010–17534 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XX59

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Outreach and Education Advisory Panel (AP).

DATES: The Outreach and Education AP meeting is scheduled to begin at 8:30 a.m. on Tuesday, August 3, 2010 and end by 4:30 p.m. on Wednesday, August 4, 2010.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Charlene Ponce, Public Information Officer; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: During this Advisory Panel meeting, the Outreach and Education AP will begin the development of a five-year strategic plan, and may provide recommendations to the Council.

Although other non-emergency issues not on the agenda may come before the Outreach and Education AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Outreach and Education AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 14, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–17524 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XX63

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in August, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 11, 2010 at 9 a.m.

ADDRESSES: This meeting will be held at the Four Points Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200; fax: (781) 289–3176.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New

England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will discuss several outstanding issues related to Amendment 15. For example, a possible restriction for permits that de-stack, a measure to address possible overages of yellowtail flounder catch in 2010 in the scallop fishery, and further clarifications about new monitoring requirements for annual catch limits in the scallop fishery. The Committee will review preliminary input from six Amendment 15 public hearings that were held in mid-July. There will also be a presentation on the results from the recent scallop assessment (SAW 50). The Committee will review input from the Scallop Advisory Panel related to the development of Framework 22 measures and other issues.

Lastly, the Committee will discuss whether the Council should consider modifying the existing Scallop Advisory Panel and separate it into two panels - one primarily focused on issues relevant to the limited access scallop fishery, and a second panel primarily focused on limited access general category issues. If time permits the Committee may discuss other issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2010.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–17525 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1696]

Reorganization/Expansion of Foreign-Trade Zone 17 under Alternative Site Framework, Kansas City, KS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 17, submitted an application to the Board (FTZ Docket 45–2009, filed 10/22/2009) for authority to reorganize under the ASF with a service area of Wyandotte, Johnson, Douglas, Shawnee, Leavenworth and Miami Counties, Kansas, within and adjacent to the Kansas City Customs and Border Protection port of entry, and FTZ 17's existing Sites 2, 3, 5, 6, 7 and 8 would be categorized as magnet sites, existing Site 4 would be categorized as a usage-driven site, existing Site 1 would be deleted, and the grantee proposes two initial usage-driven sites (Sites 9 and 10);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 55813, 10/29/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 17 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2, 3, 5, 6, 7 and 8 if not activated by July 31, 2015, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 4, 9 and 10 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2013.

Signed at Washington, DC, this 8th day of July 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–17539 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1698]

Reorganization/Expansion of Foreign-Trade Zone 61 San Juan, Puerto Rico, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Trade and Export Company, grantee of Foreign-Trade Zone 61, submitted an application to the Board for authority to reorganize and expand its zone to modify Site 1, expand Sites 5 and 10, and add three new sites (proposed Sites 14, 15 and 16) in the San Juan, Puerto Rico, area within and adjacent to the San Juan Customs and Border Protection port of entry (FTZ Docket 52–2009, filed 11/17/09);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 61657, 11/25/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report (including the renumbering of Site 1–Parcel F as Site 17 and of Site 12–Parcel A as Site 18), and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 61 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to a sunset provision that would terminate authority on June 30, 2015, for Sites 14, 15 and 16 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 8th day of July 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–17536 Filed 7–16–10; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 130, Thursday July 8, 2010, page 39209.

ANNOUNCED TIME AND DATE OF MEETING: 9 a.m.–12:30 p.m., Wednesday July 14, 2010.

CHANGES MEETING: Agenda Item 3 Cancelled.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: July 12, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–17592 Filed 7–15–10; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 21, 2010; 10:30 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 13, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–17593 Filed 7–15–10; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 21, 2010, 10 a.m.–10:30 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Decisional Matter: Public Accommodation—Virginia Graeme Baker Pool and Spa Safety Act.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 13, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–17595 Filed 7–15–10; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 10–05, 10–11, 10–18, 10–21 and 10–29]

36(b)(1) Arms Sales Notifications

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of five section 36(b)(1) arms sales notifications to fulfill the requirements of section 155 of Public Law 104–164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 10–05, 10–11, 10–18, 10–21 and 10–29 with associated attachments.

Dated: July 14, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 10–05

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–05 with attached transmittal, policy justification, and sensitivity of technology.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 3 0 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-05, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Oman for defense articles and services estimated to cost $54 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Oman

(ii) Total Estimated Value:

Major Defense Equipment*	$ 4 million
Other	$ 50 million
TOTAL	$ 54 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: logistics support and training for two (2) C-130J-30 aircraft being procured through a Direct Commercial Sale, 2 AN/AAR-47 Missile Approach Warning Systems, 2 AN/ALE-47 Countermeasure Dispenser Sets, 2 AN/ALR-56M Radar Warning Receivers, communication equipment, software support, repair and return, installation, aircraft ferry and refueling support, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and related elements of logistical and program support.

(iv) Military Department: Air Force (QAL)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex Attached

(viii) Date Report Delivered to Congress: JUN 30 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Oman – Logistics support and training for 2 C-130J-30

The Government of Oman has requested a possible sale of logistics support and training for two (2) C-130J-30 aircraft being procured through a Direct Commercial Sale, 2 AN/AAR-47 Missile Approach Warning Systems, 2 AN/ALE-47 Countermeasure Dispenser Sets, 2 AN/ALR-56M Radar Warning Receivers, communication equipment, software support, repair and return, installation, aircraft ferry and refueling support, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and related elements of logistical and program support. The estimated cost is $54 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will provide Oman the capability to meet current and future regional threats. These aircraft will improve Oman's airlift capacity to transport equipment and troops in the region, and will support U.S interests. The Royal Air Force of Oman currently operates 3 C-130H aircraft and will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

Participating contractors will be determined at a later date. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to Oman involving up to ten U.S. Government and ten contractor representatives for technical reviews/support, and program management for a period of approximately six years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-05

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/ALR-56M Radar Warning Receiver (RWR) is designed to detect incoming radar signals, identify and characterize those signals to a specific threat, and alert the aircrew through the Tactical Electronic Warfare System display. The system consists of external antennae mounted on the fuselage and wingtips. The solid state ALR-56M is based on a digitally-controlled, dual channel receiver that scans within a specific frequency spectrum and is capable of adjusting to threat changes by modifications to the software. The RWR will not be provided with In-Country Reprogramming capability. The hardware is Unclassified and the software is Secret. Technical data and documentation to be provided are Unclassified

2. The AN/AAR-47 Missile Approach Warning System warns of threat missile approach by detecting radiation associated with the rocket motor and automatically initiates flare ejection. The AN/AAR-47 is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, which normally consist of four units, is mounted on the aircraft exterior to provide omni-directional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive BIT circuitry. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. The hardware is Unclassified and the software is Secret. Technical data and documentation to be provided are Unclassified.

3. The AN/ALE-47 Countermeasure Dispenser Set (CMDS) provides an integrated threat-adaptive, computer controlled capability for dispensing chaff, flares, and active radio frequency expendables. The AN/ALE-47 system enhances aircraft survivability in sophisticated threat environments. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board Electronic

Warfare (EW) and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware is Unclassified and the software is Secret. Technical data and documentation to be provided are Unclassified.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 10–11

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–11 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 3 0 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Tunisia for defense articles and services estimated to cost $282 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Tunisia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 28 million
Other	$254 million
TOTAL	$282 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: refurbishment of twelve SH-60F Multi-Mission Utility Helicopters being provided as Excess Defense Articles (grant EDA notification is being submitted separately), 29 T700-GE-401C engines (24 installed and 5 spares), inspections, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SAM)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: 30 June 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Tunisia – Refurbishment of Twelve SH-60F Multi-Mission Helicopters

The Government of Tunisia has requested a possible sale for the refurbishment of twelve SH-60F Multi-Mission Utility Helicopters being provided as Excess Defense Articles (grant EDA notification is being submitted separately), 29 T700-GE-401C engines (24 installed and 5 spares), inspections, spare and repairs parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistics support. The estimated cost is $282 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for economic and military progress in North Africa.

This proposed sale would enhance the modernization of the Tunisian Air Force's overwater search and rescue capability and would enable continued interoperability with U.S. Armed Forces and other coalition partners in the region. The proposed sale would further improve Tunisia's overall ability to perform humanitarian missions, search and rescue, medical evacuations, fire-fighting, and to maintain the integrity of its borders. Tunisia will have no difficulty absorbing the helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor for the engines will be General Electric in Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two contractor representatives to Tunisia for familiarization training, for a period of two years. U.S. Government and contractor representatives will also be required to participate in program management and program and technical reviews, training, and maintenance support for one week intervals, semi-annually for a period of three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–18

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–18 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 1 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-18, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $77 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 77 million
TOTAL	$ 77 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 40 Skyguard AMOUN Solid-State Transmitters to support the upgrade of the Skyguard-SPARROW Launcher/Illuminator System. Also included are spare and repair parts, support equipment, personnel training and training equipment, publications and technical documents, and U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (GHW)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: JUL 01 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Skyguard AMOUN Solid-State Transmitters

The Government of Egypt has requested a possible sale of 40 Skyguard AMOUN Solid-State Transmitters to support the upgrade of the Skyguard-SPARROW Launcher/Illuminator System. Also included are spare and repair parts, support equipment, personnel training and training equipment, publications and technical documents, and U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $77 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East. This sale is consistent with these U.S. objectives and with the 1950 Treaty of Mutual Cooperation and Security.

The Egyptian Navy intends to purchase this equipment to improve the reliability and maintainability of the Skyguard air defense system. Egypt's current transmitters are over 30 years old, obsolete, or non-functional. Egypt will have no difficulty absorbing these transmitters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Integrated Defense Systems in Tewksbury, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Egypt. An onsite Contractor Engineering Technical Assistant will provide in-country support for a period of one year for training and equipment checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–21

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–21 with attached transmittal, and policy justification.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 01 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $210 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 10-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$210 million
TOTAL	$210 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continuation of technical services in support of four (4) OLIVER HAZARD PERRY and two (2) KNOX CLASS Frigates that includes, but is not limited to, engineering change proposals, tools and test equipment, software upgrades, engine component improvement, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. government and contractor technical and logistical support services, and other related program requirements.

(iv) Military Department: Navy (GIJ)

(v) Prior Related Cases, if any: Multiple cases dating back to 1997

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: JUL 0 1 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – Follow-On Technical Support

The Government of Egypt has requested a possible sale for the continuation of technical services in support of four (4) OLIVER HAZARD PERRY and two (2) KNOX CLASS Frigates that includes, but is not limited to, refurbishment and upgrading facilities, engineering change proposals, tools and test equipment, software upgrades, engine component improvement, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. government and contractor technical and logistical support services, and other related program requirements. The estimated cost is $210 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt intends to use the technical services provided to maintain the systems installed on the U.S. Navy (USN) supplied ships and USN supplied systems installed aboard Egyptian Navy platforms. The technology in these systems is maintenance intensive and requires a dedicated repair and replacement parts program to ensure the ships remain fully mission capable. This sale will provide the technical expertise, repair capability, and access to spare parts required to keep the systems operational. Egypt will have no difficulty absorbing this support into its armed forces.

The proposed sale of this service will not alter the basic military balance in the region.

The prime contractor will be VSE Global in Alexandria, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt; however, U.S. government and contractor representatives will be required to travel to Egypt annually for a period of one to two weeks to participate in program and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–29

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–29 with attached transmittal, policy justification, and Sensitivity of Technology.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 01 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-29, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost $390 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 390 million
TOTAL	$ 390 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of seven Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Air Force (QCX Amendment 3)

(v) Prior Related Cases, if any:
FMS Case QCX-$19M-22Jan07
FMS Case QCX, Amd #1-$99M-30Oct07
FMS Case QCX, Amd #2-$225M-16Apr08

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: JUL 01 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom – Globemaster III Sustainment Partnership

The Government of the United Kingdom has requested continued participation in the USAF/Boeing Globemaster III Sustainment Partnership which consists of support for the United Kingdom's fleet of seven Boeing C-17A Globemaster III cargo aircraft, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is $390 million.

The United Kingdom is a major political and economic power in NATO and a key democratic partner of the U.S. in ensuring peace and stability in this region and around the world.

(U) The program will ensure the United Kingdom can effectively maintain its current force projection capability that enhances interoperability with U.S. forces . The support will provide UK and other NATO forces with rapid global strategic mobility to deploy to austere locations. The United Kingdom is a staunch supporter of the U.S. in Iraq and Afghanistan and in overseas contingency operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company in Long Beach, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–17521 Filed 7–16–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Waiver and Extension of Project Period

AGENCY: Office of Innovation and Improvement.

ACTION: Notice of waiver and extension of project period.

SUMMARY: The Secretary waives the requirements in 34 CFR 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR), as they apply to projects funded under the DC School Choice Incentive Program (DC Choice program). This regulation generally prohibits any project period extensions involving the obligation of additional Federal funds. A waiver of this regulation would allow the one-year grant funded with fiscal year (FY) 2009 funds under the DC Choice Program to be continued beyond its original project period with FY 2010 funds. Additionally, this grantee will be able to receive additional Federal funds notwithstanding the limitation in 34 CFR 75.261(c)(2) that prohibits extension of a project period if it involves the obligation of additional Federal funds.

DATES: This waiver and extension of project period are effective August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W229, Washington, DC 20202. Telephone: (202) 260–1816 or by e-mail: *Anna.Hinton@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

The DC Choice program, established under the DC School Choice Incentive Act of 2003 (Act), provides low-income parents residing in the District of Columbia (District) with an option to send their children to private schools. In FY 2009, the Department awarded a one-year competitive grant to an applicant to provide scholarships, for the 2009–2010 school year, to students who received them in the 2008–2009 school year. The notice inviting applications for new awards for the FY 2009 DC Choice Program grant competition was published in the **Federal Register** on July 6, 2009 (74 FR 31935).

Under the absolute priority established in that notice, funds awarded under the FY 2009 competition were permitted to be used only to award scholarships to students already participating in this program prior to FY 2009.[1] The absolute priority was established to align with the instructions of Congress included in the Joint Explanatory Statement accompanying Public Law 111–8, the Omnibus Appropriations Act, 2009, that the Department use FY 2009 funds only to provide scholarships to currently enrolled program participants and not to enroll new participants. Further, the FY 2010 Appropriations Act provides that FY 2010 and prior-year funds may be used to provide scholarships in the 2010–2011 school year only to students who received scholarships in the 2009–2010 school year.

Waiver of 34 CFR 75.261(c)(2)

We are waiving the provisions of 34 CFR 75.261(c)(2) so that the current grantee may continue to receive additional funds to serve beyond the

[1] Funds are also permitted to be used for administrative and evaluation expenses.

2009–2010 school year students who are currently participating in the program. We are taking this action because we do not believe it would be in the public interest to hold a new competition under the DC Choice program for FY 2010 (and through FY 2011 provided that additional funds are appropriated under the DC Choice program) to serve these students through the time they graduate from high school.[2] With the uncertainties presented by the absence of a future authority for this program, it would not be advisable to hold a competition for a project that would likely operate for only a short period of time, and serve a limited population. The grantee that received the award in the FY 2009 competition, Washington Scholarship Fund (WSF), has recently transferred the administration of the grant to the current grantee, the DC Children and Youth Investment Trust Corporation. WSF could not continue to administer the DC Choice Program beyond the 2009–2010 school year because it was unable to obtain the additional funding commitments necessary to serve the participating families and fulfill school oversight responsibilities. In order to receive this grant, the DC Children and Youth Investment Trust Corporation was required to submit to the Department for review, as part of the grant transfer agreement, a proposal that addressed the absolute priority and each selection criterion included in the original notice inviting applications for new awards for the FY 2009 DC Choice program grant competition published in the **Federal Register** on July 6, 2009 (74 FR 31935). The current grantee will request the FY 2010 continuation award.

Therefore, the Secretary is waiving the requirements in 34 CFR 75.261(c)(2), which limit the extension of a project period if the extension involves the obligation of additional Federal funds. With this waiver, we will not announce a new competition or make a new award under the DC Choice program in FY 2010. Rather, the requirements applicable to continuation awards for the current DC Choice grantee in 34 CFR 75.253 will apply to any continuation awards sought by the grantee.

The waiver of 34 CFR 75.261(c)(2) does not exempt the current DC Choice grantee from the account-closing provisions of 31 U.S.C. 1552(a), nor does it extend the availability of funds previously awarded to the current grantee. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose.

[2] The President's 2011 budget requests funding for the program but states, "it is expected that this will be the final request for Federal funding to support the DC Opportunity Scholarship program," and permits the use of funds appropriated in prior years for future school years until the current cohort participating in the program graduates.

Waiver of Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) (APA) the Department generally offers interested parties the opportunity to comment on proposed regulations, including proposed waivers of its regulation in 34 CFR 75.261(c)(2). However, we are waiving the notice-and-comment requirements of the APA for this waiver because it would be impracticable and contrary to the public interest to delay the award of FY 2010 funds until after soliciting notice and comment on the waiver of this regulation. In order for current scholarship students to receive scholarships for the next school year, 2010–2011, the grantee must take a number of actions within the next 30 to 45 days, including verifying the eligibility of students' families for scholarships and verifying school eligibility for program participation. More specifically, the students must be determined to be eligible and enrolled in the participating schools for the upcoming school year as soon as possible. If current scholarship students are not enrolled soon, school leaders will not have the enrollment figures that are required to hire the appropriate number of teachers. These schools, therefore, would not have the resources to serve current scholarship students who attempt to enroll when the schools reopen in September 2010. In addition, a school will not enroll a current scholarship student whose eligibility for the program has not been verified. Enrolling a student who is later identified as ineligible would cause substantial financial duress for the school, and it would be detrimental to the student's education if the student is required to transfer to a new school once the school year has begun. For these reasons, it is imperative that the eligibility determinations begin immediately. Conducting notice and comment rulemaking would not allow the grantee or the schools to complete this work in the next 30 to 45 days. Accordingly, under 5 U.S.C. 553(b)(B), the Secretary has determined that notice and comment on the waiver is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that this waiver will not have a significant economic impact on a substantial number of small entities.

The small entity that will be affected by this waiver is the FY 2009 grantee, the non-profit organization currently receiving Federal funds under the DC Choice program. The waiver will not have a significant economic impact on this entity because the waiver and the activities required to support the additional year(s) of funding will not impose excessive regulatory burdens or require unnecessary Federal supervision. The waiver will impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard for continuation awards.

Paperwork Reduction Act of 1995

This notice of waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.370ADC School Choice Incentive Program)

Program Authority: Consolidated Appropriations Act 2010, Pub. L. No. 111–117; DC Code §§ 38–1851.01–38–1851.11.

Dated: July 14, 2010.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–17580 Filed 7–16–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 5, 2010, 9 a.m.–5 p.m., and Friday, August 6, 2010, 9 a.m. to 12 noon.

ADDRESSES: Washington DC/Rockville Hilton Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Perine; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone: (301) 903–6529

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE
- News from the Office of Basic Energy Sciences
- Computational Materials Science and Chemistry for Innovation Workshop
- Final Report on the Science for Energy Technologies Workshop
- EFRC Update
- COV Reports

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at 301–903–6594 (fax) or *katie.perine@science.doe.gov* (e-mail). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on July 14, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–17518 Filed 7–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on proposed revisions and three-year extensions to the Forms:

EIA–1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces" (Standby);

EIA–3, "Quarterly Coal Consumption and Quality Report—Manufacturing and Transformation/Processing Coal Plants and Commercial and Institutional Coal Users;"

EIA–4, "Weekly Coal Monitoring Report—Coke Plants" (Standby);

EIA–5, "Quarterly Coal Consumption and Quality Report—Coke Plants;"

EIA–6Q (Schedule Q), "Quarterly Coal Report" (Standby);

EIA–7A, "Coal Production Report;"

EIA–8A, "Coal Stocks Report;" and

EIA–20, "Weekly Coal Monitoring Report—Coal Burning Utilities and Independent Power Producers" (Standby).

The Standby forms are designed to be utilized under certain emergency conditions.

DATES: Comments must be filed by September 17, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to William Watson or George Warholic. To ensure receipt of the comments by the due date, submission by FAX (202–287–1944) or e-mail (*William.Watson@eia.doe.gov* or *George.Warholic@eia.doe.gov*) is recommended. The mailing address is the Coal, Nuclear, and Renewables Division, EI–52, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, William Watson may be contacted by telephone at (202) 586–1707 and George Warholic at 202–586–2307.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to George Warholic at the address listed above. Forms and Instructions are also available on the internet at: *http://www.eia.doe.gov/cneaf/coal/page/surveys/coal_survey_auth.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

EIA conducts coal surveys to collect information on coal production, receipts, consumption, quality, stocks, and prices. This information is used to support public policy analyses of the coal industry and is published in various EIA publications, including the Annual Coal Report, the Annual Energy Review, the Monthly Energy Review, and the Quarterly Coal Report. Respondents to the coal surveys include

coal producers, coal brokers, coal traders, and coal consumers.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA will be requesting a three-year extension of approval for all its coal surveys with the following survey changes proposed to Forms EIA–3, EIA–5, EIA–7A, and EIA–8A. EIA will not propose any changes to Forms EIA–1, EIA–4, EIA–6Q (Schedule Q), and EIA–20 (all standby forms). The proposed changes to Forms EIA–3, EIA–5, EIA–7A, and EIA–8A are described below:

Form EIA–3 (Quarterly Coal Consumption and Quality Report—Manufacturing and Transformation/Processing Coal Plants and Commercial and Institutional Coal Users)

EIA proposes to make several changes to the Form EIA–3 survey form and instructions. The proposed changes are to obtain additional information about the details of the coal plants and the specific origin and costs of the coal receipts.

EIA proposes to make the data on the survey form publicly available except for the data element "Total Cost of Coal Received During Quarter on a C.I.F. Basis (dollars)" in Section II.

EIA proposes to make additional minor revisions to the EIA–3 instructions and definitions to provide respondents detailed information on the additional data elements.

Form EIA–5 (Quarterly Coal Consumption and Quality Report—Coke Plants)

EIA proposes to make changes to the Form EIA–5 survey form and instructions. The proposed changes are to obtain additional information about the details of the coal plants and the specific origin and costs of the coal receipts.

EIA proposes to make the data on the survey form publicly available except for the data element "Total Cost of Coal Received During Quarter on a C.I.F. Basis (dollars)" in Section II and "Total Revenues from Commercial Sales" of coke and breeze in Section III.

EIA proposes to make additional minor revisions to the EIA–5 instructions and definitions to provide respondents detailed information on the additional data elements.

Form EIA–7A (Coal Production and Preparation Report)

EIA proposes to make changes to the Form EIA–7A survey form and instructions. The proposed changes are to obtain additional information about the coal preparation. EIA also proposes to raise the threshold on the amount of coal mined during the year that is the basis of the requirement for a mine to complete the survey.

EIA proposes to make the data on the survey form publicly available except for the data element "Total Revenue or Value (dollars)" in Section V.

EIA proposes to add to the survey a data item to collect information on the amount of coal stocks held at remote off-site locations.

EIA proposes to make additional minor revisions to the EIA–7A instructions and definitions to provide respondents detailed information on the additional data elements.

Form EIA–8A (Coal Stocks Report)

EIA proposes to make changes to the Form EIA–8A survey form and instructions. The proposed changes are to obtain additional detailed information on the specific origin(s) of the coal stocks. EIA also proposes to collect data on the coal exported by coal brokers including the amount of coal exports; the State of origin of the coal exports; the rank of the coal exports; and the total revenue associated with the coal exports.

EIA proposes to make the data on the survey form publicly available.

EIA proposes to make additional minor revisions to the EIA–8A instructions and definitions to provide respondents detailed information on the additional data elements.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. (If the notice covers more than one form, add "Please indicate to which form(s) your comments apply.")

As a Potential Respondent to the Request for Information

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the respondent by the due date?

E. Public reporting burden for this collection is estimated to average

—Form EIA–1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces" (Standby); 1.0 hour per response (no change from existing estimate of 1.0 hour)

—Form EIA–3, "Quarterly Coal Consumption and Quality Report—Manufacturing and Transformation/Processing Coal Plants and Commercial and Institutional Coal Users;" 1.25 hours per response, manufacturing plants (change from existing estimate of 0.9 hour)

—Form EIA–4, "Weekly Coal Monitoring Report—Coke Plants" (Standby); 1.0 hour per response (no change from existing estimate of 1.0 hour)

—Form EIA–5, "Quarterly Coal Consumption and Quality Report—Coke Plants;" 1.5 hours per response (change from existing estimate of 1.4 hours)

—Form EIA–6Q (Schedule Q), "Quarterly Coal Report" (Standby); 0.5 hour per response (no change from existing estimate of 0.5 hour)

—Form EIA–7A, "Coal Production and Preparation Report;" 1.8 hours per response (change from existing estimate of 1.6 hours)

—Form EIA–8A, "Coal Stocks Report;" 1.0 hour per response (change from existing estimate of 0.95 hour)

—Form EIA–20, "Weekly Coal Monitoring Report—Coal Burning Utilities and Independent Power Producers;" (Standby) 1.0 hour per response (no change from existing estimate of 1.0 hour)

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, P.L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, July 12, 2010.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 2010–17522 Filed 7–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–919–000]

Commission Information Collection Activities (FERC–919); Comment Request; Extension

July 13, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due 60 days after publication of this Notice in the **Federal Register**.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC10–919–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC10–919–000. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free) or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202)502–8415, and fax at (202)273–0873.

SUPPLEMENTARY INFORMATION: The information collected under FERC–919 (OMB Control No. 1902–0234) "Electric Rate Schedule Filings: RM04–7–000 Final Rule: Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities" is necessary to ensure that market-based rates charged by public utilities are just and reasonable as mandated by Federal Power Act (FPA) sections 205 and 206. Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since it was originally granted market-based rate authorization by the Commission.

On June 21, 2007, the Commission issued Order No. 697 [1] to modify subpart H to 18 Code of Federal Regulations (CFR) part 35. In Order No. 697, the Commission revised and codified market-based rate standards for generating electric utilities for use in the Commission's determination of whether a wholesale seller of electric energy, capacity or ancillary services qualifies for market-based rate authority. Subpart H contains the regulations necessary to mandate that sellers submit market power analyses and related reports.

Market power analyses must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, two indicative market power screens are required under Order No. 697: The uncommitted pivotal supplier screen, which is based on the annual peak demand of the relevant market, and the uncommitted market share screen applied on a seasonal basis. These screens examine whether a seller has the ability to exercise horizontal market power. Sellers that fail either screen are rebuttably presumed to have market power, and a seller that fails either screen may submit a delivered price test analysis to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case-specific circumstances. For a seller that already makes wholesale sales at market-based rates, rates are not revoked and cost-based rates are not imposed until the Commission issues an order making a definitive finding that the seller has market power or, where the seller accepts a presumption of market power, an order is issued addressing whether default cost-based rates or case-specific cost-based rates are to be applied. Once an order is issued, the Commission revokes the market-based rate authority in all geographic markets where a seller is found to have market power.[2]

Sellers that own or control more than 500 megawatts of generation and/or that own, operate or control transmission facilities, are affiliated with any entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets, or with a franchised public utility in the

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 72 FR 39,904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Final Rule).

[2] The seller has the option of withdrawing its market-based rate request in whole or in part.

same region as the seller's generation assets are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess horizontal market power. A pivotal supplier power analysis and a market share analysis must be submitted, and if the seller fails either, a delivered price test analysis must be submitted as well. When submitting horizontal market power analyses, a seller must use the form provided in Appendix A of Subpart H and include all materials referenced.

To demonstrate a lack of vertical market power, to the extent that a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, it must have on file with the Commission, a Commission-approved Open Access Transmission Tariff (burden reported separately in information collection 1902–0096). In addition, in order for a seller to demonstrate that it satisfies the Commission's vertical market power analysis, it must also demonstrate that neither it nor its affiliates can erect other barriers to entry. To demonstrate a lack of vertical market power in wholesale energy markets through the affiliation, ownership, or control of inputs to electric power production, such as the transportation or distribution of the inputs to electric power production, a seller must submit: A description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies. In addition, a seller is required to make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

Lastly, a seller must submit an asset appendix with its initial application for market-based rate authorization or updated market power analysis, and all relevant change in status filings. The asset appendix must list, among other things, all affiliates that have market-based rate authority and identify any generation assets owned or controlled by the seller and any such affiliate. The appendix must list all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit. In addition, the appendix must reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities. (*see* subpart H, appendix B for standard form).

Wholesale power marketers and wholesale power producers that are not affiliated with franchised public utilities or transmission owners, that do not own transmission, and that do not, together with all of their affiliates, own or control more than 500 MW of generation in the relevant region are not required to submit updated market power analyses. The Commission determines which sellers are in this category through information filed by the utility either when the seller files its initial application for market-based rate authorization, or through a separate filing made to request such a determination.

In early 2005, the Commission clarified and standardized market-based rate sellers' reporting requirements for any change in status that departed from the characteristics the Commission relied on in initially authorizing sales at market-based rates. In Order No. 652,[3] the Commission required, as a condition of obtaining and retaining market-base rate authority, that sellers file notices of such changes no later than 30 days after the change in status occurs. Order No. 697 incorporated minor revisions to the change in status reporting requirements. The order also codified the requirement that each seller include an appendix identifying specified assets with each pertinent change in status notification filed (*see* subpart H, appendix B for standard form).

In Order No. 697–C, in order to address concerns regarding a seller's ability to erect barriers to entry through its acquisition of control of sites for new generation capacity development, the Commission clarified that all entities with market-based rate authorization are required to report on a quarterly basis,[4] the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for which new generation capacity development is equal to 100 megawatts or more. A notification of change in status that is submitted to report the acquisition of control of a site or sites for new generation capacity must include: The number of sites acquired; the relevant geographic market in which the sites are located; and the maximum number of megawatts that are reasonably commercially feasible on the sites reported.

The market power analyses required by Order No. 697 helps to inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be made at rates that are just and reasonable. The updated market power analyses allow the Commission to monitor changes in a seller's market power or potential abuses of market power, and enable the Commission to determine whether continued market-based rate authority will still yield rates that are just and reasonable. Market-based rate tariffs with standard provisions improve the efficiency of the Commission in its analysis and determination of whether a seller satisfies the requirements for market-based rate authority. These standardized market-based rate tariffs help to reduce document preparation time by applicants and sellers, and provide utilities with the clearly defined requirements of the Commission.

ACTION: The Commission is requesting a three-year extension of the FERC–919 reporting requirements, with no changes.

Burden Statement: The estimated annual burden follows.

FERC–919 (Orders 697–A, B, C, D)	Number of respondents filing annually	Hours per response	Total annual hours
Market power analysis in new applications for market-based rates (required in 18 CFR 35.37(a))	155	250	38,750

[3] Order No. 652 at P 47.

[4] All other change in status reports must be filed no later than 30 days after the change in status occurs. 18 CFR 35.42 (2010).

FERC–919 (Orders 697–A, B, C, D)	Number of respondents filing annually	Hours per response	Total annual hours
Triennial market power analysis in category 2 seller updates (required in 18 CFR 35.37(a)) ...	74	40	2,960
Quarterly land acquisition reports (required in 18 CFR 35.42(d)) ...	40	4	160
Appendix B addition to change in status reports 18 CFR 35.42(a) ...	400	1	400
Totals ...	...	...	42,270

The total estimated annual cost burden to respondents is $2,801,891 (42,270 hours/2080 hours [5] per year, times $137,874 [6]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

[5] Estimated number of hours an employee works each year.

[6] Estimated average annual cost per employee.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17556 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–468–000; PF10–2–000]

Northern Border Pipeline Company; Notice of Application

July 12, 2010.

Take notice that on July 2, 2010, Northern Border Pipeline Company (Northern Border), 717 Texas Street, Houston, Texas, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act seeking authorization of the construction, ownership and operation of a new interstate natural gas pipeline lateral and related facilities (Princeton Lateral) designed to transport approximately 120 million cubic feet per day of natural gas from the existing Kasbeer side valve located on Northern Border's mainline system in Bureau County, Illinois, to a point of interconnection with the facilities of Central Illinois Light Company d/b/a AmerenCILCO (CILCO) near Princeton, Illinois, all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.fer.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Northern Border seeks certificate authorization to: (1) Construct a new 8.65-mile lateral of 16-inch-outside-diameter pipeline; (2) construct an inline inspection tool launcher facility near the Northern Border Kasbeer side valve site; (3) construct one 8-inch ultrasonic meter and related pipeline facilities and inline inspection tool at the CILCO delivery location; and (4) establish new lateral line rate schedules, including applicable tariff provisions and initial recourse rates for transportation service on the Princeton Lateral. Northern Border estimates the cost of the project to be approximately $18,415,000.

Any questions regarding the application may be directed to Robert Jackson, Director, Certificates and Regulatory Administration, Northern Border Pipeline Company, 717 Texas Street, Houston, Texas, at phone number: (832) 320–5487, or by e-mail: *robert_jackson@transcanada.com.*

On November 12, 2009, the Commission staff granted Northern Border's request to utilize the National Environmental Policy Act (NEPA) Pre-Filling Process and assigned Docket Number PF10–2–000 to staff activities involving the Princeton Lateral. Now, as of the filing Northern Border's application on July 2, 2010, the NEPA Pre-Filling Process for this project has ended. From this time forward, Northern Border's proceeding will be conducted in Docket No. CP10–468–000, as noted in the caption of this Notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: August 2, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17551 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 12, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–77–000.

Applicants: E.ON U.S. LLC, PPL Corporation.

Description: Application for Authorization Under section 203 of the Federal Power Act, Request for Waivers of Filing Requirements and Confidential Treatment of Agreement and Work Papers of PPL Corporation and E.ON U.S. LLC.

Filed Date: 06/28/2010.

Accession Number: 20100628–5186.

Comment Date: 5 p.m. e.t. on Monday, August 30, 2010.

Docket Numbers: EC10–80–000.

Applicants: Entegra Power, Sundevil Power Holdings LLC, Gila River Power, L.P.

Description: Joint Application for Authorization Under section 203 of the FPA, Request for Waiver of Certain Commission Requirements, and Requests for Confidential Treatment and Expedited Treatment of Entegra Power Group LLC, et al.

Filed Date: 07/08/2010.

Accession Number: 20100708–5122.

Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–48–018.

Applicants: Powerex Corp.

Description: Application of Powerex Corp. for designation as a Category 1 Seller etc.

Filed Date: 07/08/2010.

Accession Number: 20100708–5115.

Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER01–3103–023.

Applicants: Astoria Energy LLC.

Description: Astoria Energy LLC response to Commission inquiry (July 9, 2010).

Filed Date: 07/09/2010.

Accession Number: 20100709–5087.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER08–656–007.

Applicants: Shell Energy North America (U.S.), L.P.

Description: Supplement to Updated Market Power Analysis for the Southwest Power Pool Region of Shell Energy North America (US), L.P.

Filed Date: 07/09/2010.

Accession Number: 20100709–5098.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1047–001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance Refund Report of Pacific Gas and Electric Company Service Agreement for Wholesale Distribution Service and Interconnection Agreement with Monterey Regional Waste Management District.

Filed Date: 07/07/2010.

Accession Number: 20100707–5128.

Comment Date: 5 p.m. e.t. on Wednesday, July 28, 2010.

Docket Numbers: ER10–1113–001.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35: Compliance Filing to Revise WD Tariff to be effective 4/28/2010.

Filed Date: 07/09/2010.

Accession Number: 20100709–5046.

Comment Date: 5 p.m. et. on Friday, July 30, 2010.

Docket Numbers: ER10–1388–001.

Applicants: Laredo Ridge Wind, LLC.

Description: Laredo Ridge Wind, LLC submits a supplement to its market-based rate tariff application.

Filed Date: 07/08/2010.

Accession Number: 20100709–0207.

Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1389–001.

Applicants: Taloga Wind, LLC.

Description: Taloga Wind, LLC submits a supplement to its Market-Based Rate Application.

Filed Date: 07/08/2010.

Accession Number: 20100709–0206.

Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1406–001.

Applicants: Lake Cogen, Ltd.

Description: Lake Cogen, Ltd. submits tariff filing per 35: Lake Cogen—FERC Electric Tariff, Volume No. 1 to be effective 6/9/2010.

Filed Date: 07/08/2010.
Accession Number: 20100708–5046.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1416–001.
Applicants: Pasco Cogen, Ltd.
Description: Pasco Cogen, Ltd. submits tariff filing per 35: Pasco Cogen—FERC Electric Tariff, Volume No. 1, to be effective 6/10/2010.
Filed Date: 07/08/2010.
Accession Number: 20100708–5054.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1723–001.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits amendment to revisions to the Formula Rate Tariff to be effective 9/1/10.
Filed Date: 07/08/2010.
Accession Number: 20100709–0205.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1724–001.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits amendment to certain tariff revisions to the Restated Power Service Agreement with WPPI Energy to be effective 9/1/10.
Filed Date: 07/08/2010.
Accession Number: 20100709–0204.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1730–000.
Applicants: Great Bay Energy, LLC.
Description: Great Bay Energy, LLC et al submits an Application for Market-Based Rate Authorization, Designation of Category 1 Status et al.
Filed Date: 07/08/2010.
Accession Number: 20100708–0205.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1731–000.
Applicants: Great Bay Energy I, LLC.
Description: Great Bay Energy, LLC et al submits an Application for Market-Based Rate Authorization, Designation of Category 1 Status et al.
Filed Date: 07/08/2010.
Accession Number: 20100708–0205.
Comment Date: 5p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1734–000.
Applicants: MXenergy Electric Inc.
Description: MXenergy Electric Inc. submits tariff filing per 35.12: MXenergy Electric Inc. MBR Tariff to be effective 7/8/2010.
Filed Date: 07/08/2010.
Accession Number: 20100708–5062.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1735–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–07–08 CAISO New Markets Recalculation Window to be effective 10/6/2010.
Filed Date: 07/08/2010.
Accession Number: 20100708–5089.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1736–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits revisions to the Restated Power Service Agreement with Alger Delta Cooperative Electric Association, effective 9/1/10.
Filed Date: 07/08/2010.
Accession Number: 20100709–0203.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1737–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement etc to be effective 9/1/10.
Filed Date: 07/08/2010.
Accession Number: 20100709–0202.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1738–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Co submits revisions to the Restated Power Service Agreement to be effective 9/1/10.
Filed Date: 07/08/2010.
Accession Number: 20100709–0201.
Comment Date: 5 p.m. e.t. on Thursday, July 29, 2010.

Docket Numbers: ER10–1739–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.12: Entergy OpCos OATT Baseline to be effective 7/9/2010.
Filed Date: 07/09/2010.
Accession Number: 20100709–5054.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1740–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement and interconnection construction service agreement etc.
Filed Date: 07/09/2010.
Accession Number: 20100709–0209.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1741–000.
Applicants: Duquesne Light Company.
Description: Duquesne Light Company submits its Notice of Cancellation of the Connection and Site Agreement etc.
Filed Date: 07/09/2010.
Accession Number: 20100709–0208.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1742–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.
Description: Entergy Gulf States Louisiana, L.L.C. submits tariff filing per 35.12: EGSL OATT Concurrence to be effective 12/31/1998.
Filed Date: 07/09/2010.
Accession Number: 20100709–5060.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1743–000.
Applicants: Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, PSEG Fossil LLC, PSEG Nuclear LLC.
Description: Request for Waiver of Commission's Affiliate Restrictions Regulations under 18 CFR 35.39 of the PSEG Companies.
Filed Date: 07/09/2010.
Accession Number: 20100709–5092.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010

Docket Numbers: ER10–1744–000.
Applicants: Entergy Texas, Inc.
Description: Entergy Texas, Inc. submits tariff filing per 35.12: ETI OATT Concurrence to be effective 7/9/2010.
Filed Date: 07/09/2010.
Accession Number: 20100709–5100.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1745–000.
Applicants: Entergy Louisiana, LLC.
Description: Entergy Louisiana, LLC submits tariff filing per 35.12: ELL OATT Concurrence to be effective 7/9/2010.
Filed Date: 07/09/2010.
Accession Number: 20100709–5113.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1746–000.
Applicants: Entergy Mississippi, Inc.
Description: Entergy Mississippi, Inc. submits tariff filing per 35.12: EMI Baseline to be effective 7/9/2010.
Filed Date: 07/09/2010.
Accession Number: 20100709–5114.
Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1747–000.
Applicants: Entergy New Orleans, Inc.

Description: Entergy New Orleans, Inc. submits tariff filing per 35.12: ENOI OATT Concurrence to be effective 7/9/2010.

Filed Date: 07/09/2010.

Accession Number: 20100709–5115.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1748–000.

Applicants: Ormet Power Marketing, LLC.

Description: Ormet Power Marketing LLC submits Notice of Cancellation of FERC Electric Rate Schedule No 1.

Filed Date: 07/09/2010.

Accession Number: 20100712–0200.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1749–000.

Applicants: ISO New England Inc.

Description: Request of ISO New England, Inc for limited waiver of NAESB WEQ Standards.

Filed Date: 07/09/2010.

Accession Number: 20100712–0201.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010

Docket Numbers: ER10–1750–000.

Applicants: Stream Energy Pennsylvania, LLC.

Description: Application of Stream Energy Pennsylvania, LLC for market-based rate authority and granting of waivers and blanket authorizations.

Filed Date: 07/09/2010.

Accession Number: 20100712–0202.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1751–000.

Applicants: SGE Energy Sourcing, LLC.

Description: SGE Energy Sourcing, LLC submits Application for Market-Based Rate Authority and Granting of Waivers and Blanket Authorization.

Filed Date: 07/09/2010.

Accession Number: 20100712–0203.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Docket Numbers: ER10–1752–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits the Fifth Revised Agreement 66, a Network Integration Transmission Service Agreement.

Filed Date: 07/09/2010.

Accession Number: 20100712–0204.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–26–004.

Applicants: Puget Sound Energy, Inc.

Description: Compliance Filing of Puget Sound Energy, Inc.

Filed Date: 07/09/2010.

Accession Number: 20100709–5097.

Comment Date: 5 p.m. e.t. on Friday, July 30, 2010

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17546 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–027]

Energy Conservation Program for Certain Commercial and Industrial Equipment: Decision and Order Granting a Waiver to Sanyo North America Corporation From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–027, which grants Sanyo North America Corporation (Sanyo) a waiver from the existing DOE test procedures applicable to commercial package air-source and water-source central air conditioners and heat pumps. The waiver is specific to the Sanyo variable capacity ECO-i (commercial) multi-split heat pumps. As a condition of this waiver, Sanyo must use the alternate test procedure set forth in this notice to test and rate its ECO-i multi-split products.

DATES: This Decision and Order is effective July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–

0103. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE is providing notice of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Sanyo a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its ECO-i multi-split products. The waiver requires Sanyo use the alternate test procedure provided in this notice to test and rate the specified models from its ECO-i multi-split product line (as identified below). The cooling capacities of Sanyo's commercial heat pump products at issue in the waiver petition filed by Sanyo range from 72,000 Btu/h to 288,000 Btu/h. All of the air-source Sanyo products are covered by this waiver. The Sanyo water-source products with capacities greater than or equal to 135,000 Btu/h are not covered by this waiver because the DOE test procedure only covers water-source heat pumps with capacities less than 135,000 Btu/h.

Today's decision prohibits Sanyo from making any representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and the representations fairly disclose the test results. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. *Id.*

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order; In the Matter of: Sanyo North America Corp. (Sanyo) (Case No. CAC–027)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A–1 of Title III provides for a similar energy efficiency program titled "Certain Industrial Equipment," which includes large and small commercial air conditioning equipment, package boilers, storage water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. The statute specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and energy conservation standards (42 U.S.C. 6313). It also provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. (42 U.S.C. 6316) The statute authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES [Illuminating Engineering Society] Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the Secretary must amend the test procedure for a covered commercial product if the applicable industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted the International Organization for Standardization (ISO) Standard 13256–1–1998, "Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps," for small commercial package water-source heat pumps with capacities less than 135,000 British thermal units per hour (Btu/h). *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(3) incorporate by reference ISO Standard 13256–1–1998. In addition, Table 1 of 10 CFR 431.96 directs manufacturers of commercial package water-source air conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. For air-source heat pumps with capacities greater than 65,000 Btu/h, DOE adopted ARI Standard 340/360–2004.

In addition, DOE's regulations allow a person to seek a waiver for a particular basic model from the test procedure requirements for covered commercial equipment if: (1) That basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A waiver petition must include any alternate test procedures known to the petitioner to evaluate characteristics of the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An interim waiver may be granted if the Assistant Secretary determines that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. The interim waiver may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On January 4, 2010, Sanyo filed a petition for waiver from the test procedures at 10 CFR 431.96 applicable to commercial package air and water-source central air conditioners and heat pumps, as well as an application for interim waiver. The cooling capacities of Sanyo's commercial ECO-i multi-split heat pump products at issue in the waiver petition range from 72,000 Btu/h to 288,000 Btu/h. The Sanyo products with capacities ≥ 135,000 Btu/h are not covered by this waiver because there is

no DOE test procedure for water-source heat pumps with capacities ≥ 135,000 Btu/hr. The cooling capacities of Sanyo's commercial ECO-i air-source multi-split heat pump products also range from 72,000 Btu/h to 288,000 Btu/h. All of these products are covered by this waiver, as ARI Standard 340/360–2004 covers products with capacities greater than 65,000 Btu/h.

Sanyo seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its ECO-i multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Sanyo asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660 (August 27, 2004) (Mitsubishi waiver); 72 FR 17528 (April 9, 2007) (Mitsubishi waiver); 72 FR 71387 (Dec. 17, 2007) (Samsung waiver); 72 FR 71383 (Dec. 17, 2007) (Fujitsu waiver); 73 FR 39680 (July 10, 2008) (Daikin waiver); 74 FR 15955 (April 8, 2009) (Daikin waiver); 74 FR 16193 (April 9, 2009) (Sanyo waiver); 74 FR 16373 (April 10, 2009) (Daikin waiver).

On March 18, 2010, DOE published Sanyo's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 75 FR 13114. DOE received no comments on the Sanyo petition.

In a similar case, DOE published a petition for waiver from Mitsubishi for products very similar to Sanyo's multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the Mitsubishi Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528. Most of the comments were favorable. One commenter indicated that a waiver was unnecessary. However, the commenter did not present a satisfactory method of testing the products. *Id.* at 72 FR 17529. Generally, commenters agreed that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The Mitsubishi Decision and Order included the alternate test procedure adopted by DOE. *Id.* at 72 FR 17530.

Assertions and Determinations

Sanyo's Petition for Waiver

Sanyo seeks a waiver from the DOE test procedures for this product class on the grounds that its ECO-i multi-split heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, Sanyo asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waivers that DOE granted to Mitsubishi, Fujitsu General Ltd. (Fujitsu), Samsung Air Conditioning (Samsung), Daikin, and LG for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor unit to test.

The Sanyo ECO-i systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu, LG, and Daikin. As indicated above, DOE has granted waivers for these products. The ECO-i system includes 90 unique outdoor models and 54 unique indoor models, and can connect up to 40 indoor units to a single outdoor unit. There are over one million combinations possible with the Sanyo ECO-i system. Consequently, Sanyo requested that DOE grant a waiver from the applicable test procedures for its ECO-i product designs until a suitable test method can be prescribed. DOE believes that the Sanyo ECO-i equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. Therefore, DOE has decided to grant Sanyo a waiver for its ECO-i multi-split products, similar to the multi-split product waivers already issued to the other manufacturers mentioned above.

Previously, in addressing Mitsubishi's R410A CITY MULTI VRFZ products, which are similar to the Sanyo products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department [DOE] is considering setting an alternate test procedure for MEUS [Mitsubishi] in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).

(71 FR 14861, March 24, 2006).

Sanyo did not include an alternate test procedure in its petition for waiver. However, in response to two recent petitions for waiver from Mitsubishi, DOE specified an alternate test procedure that Mitsubishi could use to test and make valid energy efficiency representations for its R410A CITY MULTI products and its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007 and December 15, 2009. 72 FR 17528; 74 FR 66311. DOE believes that the same alternate test procedure specified in the Mitsubishi decision could be used to test the Sanyo products at issue here.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units simultaneously. It also understands that it is impractical to test some variable refrigerant flow zoned systems because of the number of possible combinations of indoor and outdoor units. DOE further notes that after the waiver granted for Mitsubishi's R22 multi-split products, AHRI formed a committee to develop a testing protocol for variable refrigerant flow systems. The committee developed AHRI Standard 1230–2009: "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." AHRI adopted the standard in June 2009. AHRI 1230–2009 is substantially the same as DOE's alternate test procedure with respect to the testing of these Sanyo products. It has recently been adopted as an addendum to ASHRAE 90.1, and DOE plans to consider this industry standard in a subsequent test procedure rulemaking.

DOE issues today's Decision and Order granting Sanyo a test procedure waiver for its commercial ECO-i air-

source and water-source multi-split heat pumps. As a condition of this waiver, Sanyo must use the alternate test procedure described below. This alternate test procedure is the same in all relevant particulars as the one that DOE applied to the Mitsubishi waiver.

Alternate Test Procedure

The alternate test procedure permits Sanyo to designate a "tested combination" for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five (for systems with nominal cooling capacities greater than 150,000 Btu/h, the number of indoor units may be as high as eight to be able to test non-ducted indoor unit combinations) indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below.

The alternate DOE test procedure also allows Sanyo to represent the products' energy efficiency. These representations must fairly disclose the test results. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit.

As in the Mitsubishi waiver, DOE believes that allowing Sanyo to make energy efficiency representations for non-tested combinations by adopting the alternative test procedure is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively because it does not account for their multi-zoning feature. The multi-zoning feature of these products enables them to cool only those portions of the building that require cooling. Products with a multi-zoning feature are expected to use less energy than units controlled by a single thermostat, which cool the entire home or commercial building regardless of whether only portions need cooling. The multi-zoning feature would not be properly evaluated by the current test procedure, which requires full-load testing. Full-load testing requires the entire building to be cooled. Products using a multi-zoning feature and subjected to full-load testing would be at a disadvantage because they are optimized for highest efficiency when operating with less than full loads. The alternate test procedure will provide a conservative basis for assessing the energy efficiency of such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all the indoor units must be subjected the same minimum external static pressure. This requirement enables the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. However, that approach would be so time-consuming as to be impractical.

Furthermore, DOE stated in the March 24, 2006 notice publishing the Mitsubishi petition for waiver that if it decided to specify an alternate test procedure for Mitsubishi, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14861. As noted above, most of the comments received by DOE in response to the March 2006 notice supported the proposed alternate test procedure. 72 FR 17528, 17529 (April 9, 2007). Commenters responding to that prior notice generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. *Id.*

For the reasons discussed above, DOE believes Sanyo's ECO-i multi-split products cannot be tested using the procedures prescribed in 10 CFR 431.96 (ISO Standard 13256–1 (1998) and ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2)–(3). After careful consideration, DOE has decided to prescribe the alternate test procedure first developed for the Mitsubishi waiver for Sanyo's commercial multi-split products. The alternate test procedure for the Sanyo products must include the modifications described above.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Sanyo petition for waiver. The FTC staff did not have any objections to issuing a waiver to Sanyo.

Conclusion

After careful consideration of all the materials submitted by Sanyo, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by Sanyo (Case No. CAC–027) is hereby granted as set forth in the paragraphs below.

(2) Sanyo shall not be required to test or rate its ECO-i multi-split air conditioner and heat pump models listed below on the basis of the test procedures cited in 10 CFR 431.96, specifically, ISO Standard 13256–1 (1998) and ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2–3)). Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

ECO-i Series Outdoor Units

ECOi Outdoor Unit Air Source Heat Pump Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHDX* * *63 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDXR* * *63 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Air Source Heat Pump Series (460 Volt, 3 Phase, 60 Hz)

- Models CHDX* * *74 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDXR* * *74 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216,

240, 264, 288.

ECOi Outdoor Unit Air Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHDZ* * *63 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDZR* * *63 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Air Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz)

- Models CHDZ* * *74 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.
- Models CHDZR* * *74 with capacities ranging from 72,000 to 288,000 Btu/h.
- * * *: 072, 096, 144, 168, 192, 216, 240, 264, 288.

ECOi Outdoor Unit Water Source Heat Recovery Series (208/230 Volt, 3 Phase, 60 Hz)

- Models CHWDZ* * *63 with capacities ranging from 72,000 to 96,000 Btu/h.
- * * *: 072, 096.

ECOi Outdoor Unit Water Source Heat Recovery Series (460 Volt, 3 Phase, 60 Hz)

- Models CHWDZ* * *74 with capacities ranging from 72,000 to 96,000 Btu/h.
- * * *: 072, 096.

Compatible Indoor Units for Above Listed Outdoor Units

- UMHX* *62 series low profile concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000 and 18,000 Btu/h.
- UHX* *62 series low-medium static concealed ducted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000, 24,000, 36,000, 48,000 and 54,000 Btu/h.
- DHX* *52 series medium-high static concealed ducted with nominally rated capacities of 36,000 and 48,000 Btu/h.
- XMHX* *52 series four way cassette with nominally rated capacities of 12,000 and 18,000 Btu/h.
- XHX* *52 series four way cassette with nominally rated capacities of 24,000 and 36,000 Btu/h.
- AHX* *52 series one way discharge ceiling cassette indoor units with nominally rated capacities of 7,000, 9,000 and 12,000 Btu/h.
- FHX* *62 series floor mounted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- FMHX* *62 series floor mounted concealed with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- KHX* *52 series wall mounted with nominally rated capacities of 7,000, 9,000, 12,000, 15,000, 18,000 and 24,000 Btu/h.
- KHX* *62 series wall mounted with nominally rated capacities of 18,000 and 19,000 Btu/h.
- THX* *52 series ceiling suspended with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/h.
- VHX* *62 series vertical air handler with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 60,000 Btu/h.

(3) *Alternate test procedure.*

(A) Sanyo is required to test the products listed in paragraph (2) above according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ISO Standard 13256–1 (1998) and ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)–(3)), except that Sanyo shall test a tested combination selected in accordance with the provisions of subparagraph (3)(B) below. For every other system combination using the same outdoor unit as the tested combination, Sanyo shall make representations concerning the ECO-i products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term "tested combination" means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, so as to be able to test non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity (see (b) below);

(b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, Subpart B, Appendix M.

(C) *Representations.* In making representations about the energy efficiency of its ECO-i multi-split products, for compliance, marketing, or other purposes, Sanyo must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For ECO-i multi-split combinations tested in accordance with this alternate test procedure, Sanyo may make representations based on those test results.

(ii) For ECO-i multi-split combinations that are not tested, Sanyo may make representations based on the testing results for the tested combination and that are consistent with either of the two following methods:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–17514 Filed 7–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13565–000–VT]

Charlie Hotchkin and Claire Fay; Notice of Availability of Environmental Assessment

July 13, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47879), the Office of Energy Projects has reviewed the application for a small hydro (5 megawatts or less) exemption from licensing for the Alder Brook Mini-Hydro Project, to be located on Alder Brook, near the town of Richford, Franklin County, Vermont, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzes the potential environmental effects of the project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. For further information, contact Michael Spencer at (202) 502–6093.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17559 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Amended Notice of Intent to Modify the Scope of the Surplus Plutonium Disposition Supplemental Environmental Impact Statement and Conduct Additional Public Scoping

AGENCY: U.S. Department of Energy, National Nuclear Security Administration.

ACTION: Amended Notice of Intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to modify the scope of the *Surplus Plutonium Disposition Supplemental Environmental Impact Statement* (SPD Supplemental EIS, DOE/EIS–0283–S2) and to conduct additional public scoping. DOE issued its Notice of Intent [1] (NOI) to prepare the SPD Supplemental EIS on March 28, 2007 (72 FR 14543). DOE now intends to revise the scope of the SPD Supplemental EIS to refine the quantity and types of surplus weapons-usable plutonium material, evaluate additional alternatives, and no longer consider in detail one alternative identified in the NOI (ceramic can-in-canister immobilization). Also, DOE had identified a glass can-in-canister immobilization approach as its preferred alternative in the NOI; DOE will continue to evaluate that alternative but currently does not have a preferred alternative.

DOE now proposes to analyze a new alternative to install the capability in K–Area at the Savannah River Site (SRS) to, among other things, disassemble nuclear weapons pits (a weapons component) and convert the plutonium metal to an oxide form for fabrication into mixed uranium-plutonium oxide (MOX) reactor fuel in the Mixed Oxide Fuel Fabrication Facility (MFFF); under this alternative, DOE would not build the Pit Disassembly and Conversion Facility (PDCF), which DOE previously decided to construct. This K–Area project also would provide capabilities needed to prepare plutonium for other disposition alternatives evaluated in the SPD Supplemental EIS and to support the ongoing plutonium storage mission in K–Area. DOE also proposes to evaluate a new alternative to dispose of some surplus non-pit plutonium as transuranic waste at the Waste Isolation Pilot Plant (WIPP) in New Mexico, provided the plutonium would meet the criteria for such disposal. In addition, DOE will analyze the potential environmental impacts of using MOX fuel in up to five reactors owned by the Tennessee Valley Authority (TVA) at the Sequoyah (near Soddy-Daisy, TN) and Browns Ferry (near Decatur and Athens, AL) nuclear stations. TVA will be a cooperating agency with DOE for preparation and review of the sections of the SPD Supplemental EIS that address operation of TVA reactors.

DATES: DOE invites Federal agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public to submit comments to assist in identifying environmental issues and in determining the scope of the SPD Supplemental EIS. The public scoping period will end on September 17, 2010. DOE will consider all comments received or postmarked by September 17, 2010. Comments received after that date will be considered to the extent practicable. Also, DOE asks that Federal, state, and local agencies that desire to be designated cooperating agencies on the SPD Supplemental EIS contact the National Environmental Policy Act (NEPA) Document Manager at the addresses listed under **ADDRESSES** by the end of the scoping period. DOE will hold five public scoping meetings:

- August 3, 2010 (5:30 p.m. to 8 p.m.) at Calhoun Community College, Decatur Campus, Aerospace Building, 6250 Highway 31 North, Tanner, AL 35671
- August 5, 2010 (5:30 p.m. to 8 p.m.) at Chattanooga Convention Center, 1150 Carter Street, Chattanooga, TN 37402
- August 17, 2010 (5:30 p.m. to 8 p.m.) at North Augusta Municipal Center, 100 Georgia Avenue, North Augusta, SC 29841
- August 24, 2010 (5:30 p.m. to 8 p.m.) at Best Western Stevens Inn, 1829 S. Canal Street, Carlsbad, NM 88220
- August 26, 2010 (5:30 p.m. to 8 p.m.) at Courtyard by Marriott Santa Fe, 3347 Cerrillos Road, Santa Fe, NM 87507

ADDRESSES: Please direct written comments on the scope of the SPD Supplemental EIS to Ms. Sachiko McAlhany, SPD Supplemental EIS NEPA Document Manager, U.S. Department of Energy, P.O. Box 2324, Germantown, MD 20874–2324. You may also send comments on the scope of the SPD Supplemental EIS via e-mail to *spd supplementaleis@saic.com,* or via the Web site, *http://www.spdsupplementaleis.com;* or by toll-free fax to 877–865–0277. DOE will give equal weight to written, e-mail, fax, and oral comments. Questions regarding the scoping process and requests to be placed on the distribution list for this Supplemental EIS should be directed to

[1] The NOI identified the title of the document as the *Supplemental Environmental Impact Statement for Surplus Plutonium Disposition at the Savannah River Site.*

Ms. McAlhany by any of the means given above or by calling toll-free 877–344–0513.

For general information concerning the DOE NEPA process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0103; telephone 202–586–4600, or leave a message at 1–800–472–2756; fax 202–586–7031; or send an e-mail to *AskNEPA@hq.doe.gov.* This Amended NOI will be available on the Internet at *nepa.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background

To reduce the threat of nuclear weapons proliferation, DOE is engaged in a program to disposition its surplus, weapons-usable plutonium in a safe, secure, and environmentally sound manner by converting such plutonium into proliferation-resistant forms that can never again be readily used in nuclear weapons. The SPD Supplemental EIS will analyze the potential environmental impacts of reasonable alternatives [2] to disposition approximately 7 metric tons (MT) [3] of additional plutonium from pits ("pit plutonium"; a pit is the core of a nuclear weapon) which were declared surplus to national defense needs after publication of the NOI and were not included in DOE's prior decisions. The SPD Supplemental EIS also will analyze reasonable disposition alternatives for approximately 6 MT [4] of non-pit plutonium. DOE also intends to evaluate the potential impacts associated with disposition of additional plutonium to account for the possibility that the United States may declare additional plutonium to be surplus in the future and, as analyzed in the *Environmental Assessment for the U.S. Receipt and Storage of Gap Material—Plutonium* (DOE/EA–1771, May 2010), small quantities of plutonium (totaling up to 100 kilograms) that the United States may accept from at-risk foreign locations as part of the Global Threat Reduction Initiative.

The SPD Supplemental EIS will not reconsider decisions already made to disposition surplus plutonium, other than the decision discussed below to construct a stand-alone PDCF. DOE already has decided to fabricate 34 MT of surplus plutonium into MOX fuel in the MFFF (68 FR 20134, April 24, 2003), currently under construction at SRS, and to irradiate the MOX fuel in commercial nuclear reactors used to generate electricity, thereby rendering the plutonium into a spent fuel form not readily usable in nuclear weapons. DOE has set aside approximately 4 MT of surplus plutonium in the form of unirradiated reactor fuel for non-defense programmatic use (e.g., reactor fuels research and development) as explained in the 2007 NOI (72 FR 14543, March 28, 2007), and approximately 7 MT of surplus plutonium is contained in irradiated reactor fuel and, thus, already is in a proliferation-resistant form (see 65 FR 1608, January 11, 2000). Finally, DOE already has disposed of approximately 3 MT of surplus plutonium scrap and residues at WIPP as transuranic waste [5] and has decided to process approximately 0.6 MT at SRS through the H–Canyon, ultimately to be incorporated into vitrified high-level waste at the Defense Waste Processing Facility (DWPF).[6]

Previously Completed NEPA Analyses and Decisions Made

In the *Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS* (Storage and Disposition PEIS, DOE/EIS–0229, December 1996), DOE evaluated six candidate sites for plutonium disposition facilities and three categories of disposition technologies that would convert surplus plutonium into a form that would meet the Spent Fuel Standard.[7] The three categories were: Deep Borehole Category (two options); Immobilization Category (three options); and Reactor Category (four options). DOE also analyzed a No Action Alternative. DOE selected a dual-path strategy for disposition that would allow immobilization of some or all of the surplus plutonium in glass or ceramic material for disposal in a geologic repository, and fabrication of some surplus plutonium into MOX fuel for irradiation in existing domestic commercial reactor(s), with subsequent disposal of the spent fuel in a geologic repository [8] (62 FR 3014, January 21, 1997). DOE also decided that an immobilization facility would be located either at the Hanford Site in Washington or at SRS.

In November 1999, DOE issued the *Surplus Plutonium Disposition EIS* (SPD EIS, DOE/EIS–0283). The SPD EIS tiered from the Storage and Disposition PEIS and included an analysis of the potential environmental impacts associated with alternative technologies and sites to implement the dual-path plutonium disposition strategy. The SPD EIS also analyzed the impacts of using MOX fuel in certain domestic commercial reactors to generate electricity. In January 2000, DOE decided to construct and operate three disposition facilities at SRS: (1) the MFFF to fabricate up to 33 MT of surplus plutonium into MOX fuel [9]; (2)

[2] The disposition alternatives to be analyzed in the SPD Supplemental EIS are not expected to change the type of material to be processed into MOX fuel or to change the annual throughput, annual environmental impacts, or the types of waste generated by the MFFF.

[3] In 2007, the United States declared 9 MT of pit plutonium as surplus to U.S. defense needs. Approximately 2 MT are included in the 34 MT of surplus and future-declared surplus plutonium that DOE previously decided to fabricate into MOX fuel (68 FR 20134, April 24, 2003), leaving approximately 7 MT of additional surplus pit plutonium for disposition.

[4] The 2007 NOI for the SPD Supplemental EIS stated that the scope would include up to 13 MT of surplus non-pit plutonium that DOE had previously planned to immobilize, although of that 13 MT, DOE had decided in 2003 to fabricate approximately 6.5 MT of this non-pit plutonium into MOX fuel (68 FR 20134, April 24, 2003). Since publication of the NOI in 2007, DOE has decided to disposition approximately 0.6 MT of non-pit plutonium via H–Canyon and the Defense Waste Processing Facility (see footnote 6). Thus, DOE now plans to analyze disposition options for approximately 6 MT of surplus non-pit plutonium.

[5] Disposal of certain plutonium scrap and residues at WIPP was undertaken pursuant to several records of decision (63 FR 66136, December 1, 1998; 64 FR 8068, February 18, 1999; 64 FR 47780, September 1, 1999; 66 FR 4803, January 18, 2001; 68 FR 44329, July 28, 2003).

[6] The decisions to process approximately 0.6 MT of surplus non-pit plutonium through H–Canyon and DWPF are contained in two interim action determinations approved at SRS on December 8, 2008, and September 25, 2009.

[7] Under that standard, the surplus weapons-usable plutonium should be made as inaccessible and unattractive for weapons use as the much larger and growing quantity of plutonium that exists in spent nuclear fuel from commercial power reactors.

[8] DOE has since decided to terminate the program to develop a Yucca Mountain repository for geologic disposal of spent nuclear fuel and high-level waste. DOE has established a Blue Ribbon Commission on America's Nuclear Future (Blue Ribbon Commission) to develop and recommend alternative storage and disposal approaches for spent nuclear fuel and high-level waste. Notwithstanding termination of the Yucca Mountain program, DOE remains committed to meeting its obligations to manage and ultimately dispose of spent nuclear fuel and high-level waste. The Blue Ribbon Commission will conduct a comprehensive review of the back-end of the fuel cycle and evaluate alternative approaches for meeting these obligations. The Blue Ribbon Commission will provide the opportunity for a meaningful dialogue on how best to address this challenging issue and will provide recommendations to DOE for developing a safe, long-term solution to managing the Nation's spent nuclear fuel and high-level waste.

[9] In the 2000 Record of Decision (ROD), DOE noted that it had awarded a contract to Duke Engineering & Services, COGEMA Inc., and Stone & Webster (known as DCS) that included reactor irradiation of MOX fuel at Duke Energy's Catawba and McGuire Nuclear Stations. The SPD EIS and ROD also addressed two Virginia Power reactors at the North Anna Nuclear Station in Virginia. Virginia Power's involvement in the MOX program ended soon thereafter.

a PDCF to disassemble nuclear weapons pits and convert the plutonium metal to an oxide form for use as feed material for the MFFF; and (3) an immobilization facility using ceramic can-in-canister technology that would allow for the immobilization of approximately 17 MT of surplus plutonium (65 FR 1608, January 11, 2000). Using the can-in-canister technology, DOE was to immobilize plutonium in a ceramic form, seal it in cans, and place the cans in canisters to be filled with borosilicate glass containing intensely radioactive high-level waste at DWPF.

In 2002, DOE cancelled the immobilization portion of the plutonium disposition strategy (67 FR 19432, April 19, 2002). In 2003, DOE affirmed the MOX-only approach for plutonium disposition, in which 34 MT (increased from 33 MT) of surplus plutonium, including approximately 6.5 MT of the non-pit plutonium originally intended for immobilization, would be dispositioned by fabrication into MOX fuel for use in power reactors (68 FR 20134, April 24, 2003).

In 2005, DOE completed an *Environmental Assessment for the Safeguards and Security Upgrades for Storage of Plutonium Materials at SRS* (DOE/EA–1538, 2005) and issued a Finding of No Significant Impact. Among other things, this Environmental Assessment analyzed impacts associated with installation of a Container Surveillance and Storage Capability (CSSC) in an existing facility in K–Area at SRS. The CSSC capabilities are encompassed within what DOE refers to as the Plutonium Preparation Project (PuP). One phase of the PuP would provide stabilization and packaging capabilities, including direct metal oxidation, to fulfill plutonium storage requirements pursuant to DOE–STD–3013, Stabilization, Packaging, and Storage of Plutonium-Bearing Materials.

In 2007, DOE decided to consolidate surplus non-pit plutonium stored separately at the Hanford Site, the Los Alamos National Laboratory (LANL), and the Lawrence Livermore National Laboratory (LLNL) to a single storage location in K–Area at SRS, pending disposition (72 FR 51807, September 11, 2007). Shipments from Hanford have been completed, and shipments from LANL and LLNL to SRS for consolidated storage are continuing.

In 2008, DOE completed a supplement analysis (DOE/EIS–0283–SA–2) related to the treatment and solidification of certain liquid low-level radioactive waste and transuranic waste to be generated by the MFFF and PDCF. DOE decided to construct and operate a stand-alone waste solidification building in the F–Area at SRS (73 FR 75088, December 10, 2008); this facility is now under construction.

2007 Notice of Intent and Public Scoping Comments

On March 28, 2007, DOE issued an NOI (72 FR 14543) to prepare the SPD Supplemental EIS in order to evaluate the potential environmental impacts of disposition alternatives for up to approximately 13 MT of surplus, non-pit weapons-usable plutonium originally planned for immobilization. In the 2007 NOI, DOE stated that its preferred alternative was to construct and operate a new vitrification facility within an existing building at SRS to immobilize some of the surplus, non-pit plutonium, and to process some of the surplus, non-pit plutonium in the existing H–Canyon and DWPF at SRS. That NOI also explained that DOE would analyze the impacts of fabricating some (up to approximately one-third) of the surplus, non-pit plutonium into MOX fuel.

The original scoping period for the SPD Supplemental EIS began on March 28, 2007, and ended on May 29, 2007. Scoping meetings were held in Aiken, SC, and in Columbia, SC, on April 17 and 19, 2007, respectively. Some commentors favored the glass can-in-canister alternative for the entire surplus plutonium inventory, while others favored use of as much surplus plutonium as possible as feed material for the MFFF. One commentor asked that DOE identify the quantities of surplus plutonium by form and proposed disposition pathway. DOE will consider these comments, and others received during the upcoming scoping period, when preparing the Draft SPD Supplemental EIS.

Purpose and Need for Action

DOE's purpose and need remains, as stated in the SPD EIS, to reduce the threat of nuclear weapons proliferation worldwide by conducting disposition of surplus plutonium in the United States in an environmentally safe and timely manner. Comprehensive disposition actions are needed to ensure that surplus plutonium is converted into proliferation-resistant forms.

Proposed Action and Alternatives

In the SPD Supplemental EIS, DOE will analyze the potential environmental impacts of alternatives for the disposition of approximately 7 MT of surplus pit plutonium and approximately 6 MT of surplus non-pit plutonium. DOE also will analyze the impacts of irradiating MOX fuel in TVA reactors at the Sequoyah and Browns Ferry nuclear stations and will analyze options for the construction and operation of the PDCF and PuP capabilities at SRS. Brief descriptions of the alternatives DOE proposes to evaluate in the SPD Supplemental EIS are provided below.

- PDCF—DOE would construct and operate a stand-alone PDCF facility in F–Area at SRS to convert plutonium pits and other plutonium metal to an oxide form suitable for feed to the MFFF, as described in the SPD EIS and consistent with DOE's decision announced in the 2000 Record of Decision (ROD) for that EIS (65 FR 1608, January 11, 2000).
- PuP—DOE would install and operate the plutonium processing equipment required to store and prepare non-pit plutonium for disposition through any of the alternative pathways (MOX fuel, H–Canyon/DWPF, Glass Can-in-Canister, and WIPP). Differences in required capabilities for the alternatives will be evaluated in the SPD Supplemental EIS. The PuP project would be installed in K–Area at SRS.
- Combined PDCF/PuP Capability—DOE would install and operate a capability in K–Area at SRS necessary to perform the functions of both PDCF and PuP. The analysis will include reconfiguration of ongoing K–Area operations necessary to accommodate construction and operation of the combined capability.
- H–Canyon/DWPF—DOE would use the H–Canyon facility to process surplus non-pit plutonium for disposition. Plutonium materials would be dissolved, and the resulting plutonium-bearing solutions would be sent to a sludge batch feed tank and then to DWPF for vitrification. Within this alternative, DOE will analyze the potential environmental impacts of adding additional plutonium to the DWPF feed, which may increase the amount of plutonium in some DWPF canisters above historical levels.
- Glass Can-in-Canister—DOE would establish and operate a glass can-in-canister capability in K–Area at SRS. The analysis will assume that both surplus pit and non-pit plutonium would be vitrified within small cans, which would be placed in a rack inside a DWPF canister and surrounded with vitrified high-level waste. This alternative is similar to one evaluated in the SPD EIS, except that the capability would be installed in an existing rather than a new facility. Within this alternative DOE will analyze the potential environmental impacts of adding cans of vitrified plutonium to some of the DWPF canisters, which would increase the amount of

plutonium in those DWPF canisters above historical levels.

• WIPP—DOE would establish and operate a capability to prepare and package non-pit plutonium using PuP (or the combined PDCF/PuP capability) and other existing facilities at SRS for disposal as transuranic waste at WIPP, provided that the material would meet the WIPP waste acceptance criteria. This alternative may include material that, because of its physical or chemical configuration or characteristics, could not be prepared for MFFF feed material.

• MOX Fuel—PDCF, PuP, or the combined PDCF/PuP capabilities would be used to prepare some surplus plutonium as feed for the MFFF, and the resultant MOX fuel would be irradiated in commercial nuclear reactors. The analysis will assume that all of the surplus pit and some of the surplus non-pit plutonium would be dispositioned in this manner.

• Reactor Operations—DOE will evaluate the impacts of construction of any reactor facility modifications [10] necessary to accommodate MOX fuel operation at five TVA reactors—the three boiling water reactors (BWRs) at Browns Ferry and the two pressurized water reactors (PWRs) at Sequoyah. DOE will evaluate the impacts of operation of these reactors using a core loading with the maximum technically and economically viable number of MOX fuel assemblies.

DOE no longer proposes to evaluate in detail the ceramic can-in-canister alternative identified in the 2007 NOI for the SPD Supplemental EIS. In the SPD EIS, DOE identified no substantial differences between the ceramic can-in-canister and glass can-in-canister approaches in terms of expected environmental impacts to air quality, waste management, human health risk, facility accidents, facility resource requirements, intersite transportation, and environmental justice. DOE infrastructure and expertise associated with the ceramic technology has not substantially evolved or matured since 2003. In contrast, DOE has maintained research, development, and production infrastructure capabilities for glass waste forms. Therefore, DOE has decided that the glass can-in-canister technology is sufficiently representative of both technologies in terms of understanding potential environmental impacts and that the relative technical maturity of the glass can-in-canister approach gives it a greater chance of meeting DOE mission needs.

[10] The SPD Supplemental EIS also will evaluate environmental impacts from potential minor modifications to the MFFF that may be needed to accommodate fabrication of TVA reactor MOX fuel.

Potential Decisions

Since initiating the SPD Supplemental EIS process in 2007, DOE has continued to evaluate alternatives for disposition of surplus plutonium. DOE is evaluating the advantages and disadvantages of combining the PDCF and the PuP to accomplish the functions of both projects in an existing facility in K–Area at SRS. DOE will decide, based on programmatic, engineering, facility safety, cost, and schedule information, and the environmental impact analysis in the SPD Supplemental EIS, whether to implement the combined project in K–Area at SRS (PDCF/PuP) or to separately construct and operate PDCF in F–Area and PuP in K–Area at SRS.

DOE also will decide which alternatives to use for disposition of approximately 7 MT of surplus weapons-usable pit plutonium and approximately 6 MT of surplus weapons-usable non-pit plutonium for which DOE has not made a disposition decision.

DOE is evaluating alternatives for surplus non-pit plutonium that currently does not meet the specification for disposition through the MFFF. While this material could be immobilized for disposition using the glass can-in-canister alternative, DOE is evaluating three other alternative disposition paths: processing through H–Canyon and incorporation into vitrified high-level waste at DWPF; preparation for disposal at WIPP; and pretreatment to make the material suitable as feed for the MFFF.

In addition, the contract with Duke Energy Company to irradiate MOX fuel in four of its reactors terminated in late 2008. At present, DOE and TVA are evaluating use of MOX fuel in up to five TVA reactors at the Sequoyah and Browns Ferry nuclear stations, near Soddy-Daisy, TN, and Decatur and Athens, AL, respectively. DOE and TVA will determine whether to pursue irradiation of MOX fuel in TVA reactors and will determine which reactors to use initially for this purpose should DOE and TVA decide to use MOX fuel in TVA reactors.

Potential Environmental Issues for Analysis

DOE has tentatively identified the following environmental issues for analysis in the SPD Supplemental EIS. The list is presented to facilitate comment on the scope of the SPD Supplemental EIS and is not intended to be comprehensive or to predetermine the potential impacts to be analyzed.

• Impacts to the general population and workers from radiological and nonradiological releases, and other worker health and safety impacts.

• Impacts of emissions on air and water quality.

• Impacts on ecological systems and threatened and endangered species.

• Impacts from waste management activities, including from storage of DWPF canisters and transuranic waste pending disposal.

• Impacts from the transportation of radioactive materials, reactor fuel assemblies, and waste.

• Impacts of postulated accidents and from terrorist actions and sabotage.

• Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).

• Short-term and long-term land use impacts.

NEPA Process

Following the scoping period announced in this Amended Notice of Intent, and after consideration of comments received during scoping, DOE will prepare a Draft SPD Supplemental EIS. DOE will announce the availability of the Draft SPD Supplemental EIS in the **Federal Register** and local media outlets. Comments received on the Draft SPD Supplemental EIS will be considered and addressed in the Final SPD Supplemental EIS. DOE will issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final SPD Supplemental EIS.

Other Agency Involvement

The Tennessee Valley Authority will be a cooperating agency with DOE for preparation and review of the sections of the SPD Supplemental EIS that address operation of TVA reactors using MOX fuel assemblies. DOE invites Federal and non-Federal agencies with expertise in the subject matter of the SPD Supplemental EIS to contact the NEPA Document Manager (*see* **ADDRESSES**) if they wish to be a cooperating agency in the preparation of the SPD Supplemental EIS.

Issued in Washington, DC, on 13 July, 2010.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–17519 Filed 7–16–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1731–000]

Great Bay Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 13, 2010.

This is a supplemental notice in the above-referenced proceeding of Great Bay Energy I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 2, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17553 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1751–000]

SGE Energy Sourcing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 13, 2010.

This is a supplemental notice in the above-referenced proceeding of SGE Energy Sourcing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 2, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17557 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1730–000]

Great Bay Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 13, 2010.

This is a supplemental notice in the above-referenced proceeding of Great Bay Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 2, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17554 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1750–000]

Stream Energy Pennsylvania, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 13, 2010.

This is a supplemental notice in the above-referenced proceeding of Stream Energy Pennsylvania, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 2, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17552 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–52–000]

Enogex L.L.C.; Notice of Petition for Rate Approval

July 13, 2010.

Take notice that on July 1, 2010, Enogex L.L.C. (Enogex) filed pursuant to section 284.123(b)(2) of the Commission's regulations, filed a petition requesting that the Commission approve its rates pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978. Enogex proposes to reduce its fixed fuel percentages to a fuel factor of 0.69% for the East Zone and a fuel factor of 0.59% for the West Zone of its system for the period of August 1, 2010 through March 31, 2011.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, July 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17558 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–53–000]

ONEOK Field Services Company, LLC; Notice of Petition for Rate Approval

July 13, 2010.

Take notice that on July 1, 2010, ONEOK Field Services Company, LLC

(OFS) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. OFS states it is filing for approval for a new maximum rate for interruptible transportation service provided pursuant to Section 311 of the NGPA.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERC OnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, July 26, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17548 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13686–000]

KC Hydro LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 9, 2010.

On March 23, 2010, KC Hydro LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cline Falls Hydro Project located on the Deschutes River in Deschutes County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following existing features: (1) A 5-foot-high, 300-foot-long diversion structure; (2) a pond with a storage capacity of 1 to 2 acre-feet; (3) a canal and box flume, connected to a 96-inch-diameter, 45-foot-long steel penstock; (4) a powerhouse containing a 750-kW Francis turbine/generator; (5) a tailrace leading from a rock chamber located under the turbine to the River; and (6) appurtenant facilities.

Applicant Contact: Kelly W. Sackheim, Managing Member, 5096 Cocoa Palm Way, Fair Oaks, CA 95628; phone: (916) 962–2271.

FERC Contact: Kelly Wolcott, (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERC OnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13686) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17560 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12632–001–Texas]

East Texas Electric Cooperative, Inc.: Lake Livingston Hydroelectric Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 9, 2010.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR section 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Texas State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Lake Livingston Hydroelectric Project.

The Programmatic Agreement, when executed by the Commission, the Texas SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

East Texas Electric Cooperative, Inc., as prospective licensee for Project No. 12632–001, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 12632–001 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW.,Washington, DC 20004.

Debra L. Beene or Representative, Texas Historical Commission, 1511 Colorado, Austin, TX 78701.

Bryant J. Celestine, THPO, Alabama-Coushatta Tribe of Texas, 571 State Park Road 56, Livingston, TX 77351.

Robert Cast, THPO, Caddo Nation, P.O. Box 487, Binger, OK 73009.

Don Spaulding, Tribal Administrator, Kickapoo Traditional Tribe of Texas, HCR 1, Box 9700, Eagle Pass, TX 78852.

Edd Hargett, East Texas Electric Cooperative, Inc., 2905 Westward Drive, Nacogdoches, TX 75963.

Michael N. McCarty, Brickfield Burchette Ritts & Stone, PC, 1025 Thomas Jefferson Street, NW., Eighth Floor, West Tower, Washington, DC 20007.

Fred B. Werkenthin, Booth, Ahrens & Werkenthin, P.C., 515 Congress Avenue, Suite 1515, Austin, TX 78701.

Howard Slobodin, Trinity River Authority of Texas, P.O. Box 60, Arlington, TX 76004–0060.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and eight copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17547 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional State Committee Meeting and Southwest Power Pool Board of Directors Meeting

July 13, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional State Committee, and SPP Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Meeting

July 26, 2010 (1 p.m.–5 p.m.), Embassy Suites Downtown/Old Market, 555 South 10th St., Omaha, NE 68102, 402–346–9000.

SPP Board of Directors Meeting

July 27, 2010 (8 a.m.–3 p.m.), Embassy Suites Downtown/Old Market, 555 South 10th St., Omaha, NE 68102, 402–346–9000.

The discussions may address matters at issue in the following proceedings:

Docket No. EL09–40, *Southwest Power Pool, Inc.*
Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–923, *Xcel Energy Services, Inc.*
Docket No. ER08–1307, *Southwest Power Pool, Inc.*
Docket No. ER08–1308, *Southwest Power Pool, Inc.*
Docket No. ER08–1357, *Southwest Power Pool, Inc.*
Docket No. ER08–1358, *Southwest Power Pool, Inc.*
Docket No. ER08–1359, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–35, *Tallgrass Transmission LLC.*
Docket No. ER09–36, *Prairie Wind Transmission LLC.*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER09–1254, *Southwest Power Pool, Inc.*
Docket No. ER09–1255, *Southwest Power Pool, Inc.*
Docket No. ER09–1397, *Southwest Power Pool, Inc.*
Docket No. ER09–1716, *Southwest Power Pool, Inc.*
Docket No. ER10–352, *Southwest Power Pool, Inc.*
Docket No. OA08–5, *Southwest Power Pool, Inc.*
Docket No. OA08–60, *Southwest Power Pool, Inc.*
Docket No. OA08–61, *Southwest Power Pool, Inc.*
Docket No. OA08–104, *Southwest Power Pool, Inc.*
Docket No. ER10–664, *Southwest Power Pool, Inc.*
Docket No. ER10–678, *Southwest Power Pool, Inc.*
Docket No. ER10–680, *Southwest Power Pool, Inc.*
Docket No. ER10–681, *Southwest Power Pool, Inc.*
Docket No. ER10–692, *Southwest Power Pool, Inc.*
Docket No. ER10–693, *Southwest Power Pool, Inc.*
Docket No. ER10–694, *Southwest Power Pool, Inc.*
Docket No. ER10–696, *Southwest Power Pool, Inc.*
Docket No. ER10–697, *Southwest Power Pool, Inc.*
Docket No. ER10–698, *Southwest Power Pool, Inc.*
Docket No. ER10–700, *Southwest Power Pool, Inc.*
Docket No. ER10–738, *Southwest Power Pool, Inc.*
Docket No. ER10–739, *Southwest Power Pool, Inc.*
Docket No. ER10–754, *Southwest Power Pool, Inc.*
Docket No. ER10–760, *Southwest Power Pool, Inc.*
Docket No. ER10–761, *Southwest Power Pool, Inc.*
Docket No. ER10–762, *Southwest Power Pool, Inc.*
Docket No. ER10–773, *Southwest Power Pool, Inc.*
Docket No. ER10–795, *Southwest Power Pool, Inc.*
Docket No. ER10–798, *Southwest Power Pool, Inc.*
Docket No. ER10–813, *Southwest Power Pool, Inc.*
Docket No. ER10–824, *Southwest Power Pool, Inc.*
Docket No. ER10–830, *Southwest Power Pool, Inc.*
Docket No. ER10–831, *Southwest Power Pool, Inc.*

Docket No. ER10–833, *Southwest Power Pool, Inc.*
Docket No. ER10–888, *Southwest Power Pool, Inc.*
Docket No. ER10–897, *Southwest Power Pool, Inc.*
Docket No. ER10–925, *Southwest Power Pool, Inc.*
Docket No. ER10–941, *Southwest Power Pool, Inc.*
Docket No. ER10–1014, *Southwest Power Pool, Inc.*
Docket No. ER10–1069, *Southwest Power Pool, Inc.*
Docket No. ER10–1233, *Southwest Power Pool, Inc.*
Docket No. ER10–1269, *Southwest Power Pool, Inc.*
Docket No. ER10–1308, *Southwest Power Pool, Inc.*
Docket No. ER10–1316, *Southwest Power Pool, Inc.*
Docket No. ER10–1317, *Southwest Power Pool, Inc.*
Docket No. ER10–1557, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17555 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Southwest Power Pool ICT Stakeholder Policy Committee Meeting

July 12, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

July 21, 2010 (1 p.m.–5 p.m.), Sheraton North Houston, 15700 John F. Kennedy Blvd., Houston, TX 77032, 281–442–5100.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. OA08–59	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–879	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1367	Entergy Services, Inc.
Docket No. ER10–1676	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17550 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Termination of License by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

July 9, 2010.

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 3037–014.

c. *Date Initiated:* July 01, 2010.

d. *Licensee/owner/former owners:* Roosevelt Hydroelectric Company; Rhode Island Department of Environmental Management; BTSFEO, LLC (BTSFEO); and Tai-O Associates L.P. (Tai–O).

e. *Name and Location of Project:* The constructed 700-kilowatt (kW) Elizabeth Webbing Mills Project is located on the Blackstone River in Providence County, Rhode Island.

f. *Proceeding Initiated Pursuant to:* Standard Article 16 of the project's license and 18 CFR 6.4 (2010).

g. *FERC Contact:* Diane Murray, (202) 502–8838.

h. *Deadline for filing comments, protests, and motions to intervene:* August 9, 2010.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. Please include the project number (P–3037–014) on any documents or motions filed. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original

and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

i. *Description of Existing Facilities:* (1) A granite masonry dam, 156 feet long and 10 feet high with provisions for installing 12-inch flashboards; (2) a reservoir of negligible storage capacity; (3) a headrace, 14 to 40 feet wide and 39 feet long; (4) a powerhouse, 40 feet wide and 39 feet long, containing a turbine with a rated capacity of 745 kW, connected to a generator with a rated capacity of 700 kW; (5) a 400-foot-long, 5-kV transmission line, a 1,000-kVA transformer, and a 70-foot-long, 15-kV transmission line; (6) a tailrace; and (7) other appurtenances.

j. *Description of Proceeding:*

18 CFR 6.4 of the Commission's regulations provides, among other things, that it is deemed to be intent of a licensee to surrender a license, if the licensee abandons a project for a period of three years. In addition, standard Article 16 of the license for Project No. 3037, provides, in pertinent part:

> If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission * * *, the Commission will deem it to be the intent of the Licensee to surrender the license * * *

A minor license for the project was issued in 1981 to Roosevelt Hydro Electric Company (Roosevelt Hydro). 16 FERC ¶ 62,040 (1981). The project has not operated since 2001 when Roosevelt Hydro filed for bankruptcy and is currently in disrepair. BTSFEO purchased the project in 2004 through the bankruptcy proceeding, and in December 2006 it sold the project to Tai-O. In September 2009, Tai-O entered into a contract with Rhode Island DEM to sell the project to Rhode Island DEM. The sale has been completed.

By order issued July 09, 2010, the Commission dismissed an application for approval to transfer the license to Tai-O (because Tai-O sold the project and does not intend to act as a licensee) and initiated a proceeding to terminate the license for Project No. 3037 by implied surrender.

k. *Location of the Order:* A copy of the order is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", and "RECOMMENDATIONS FOR TERMS AND CONDITIONS", as applicable, and the Project Number of the proceeding.

n. Agency Comments—Federal, states, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17549 Filed 7–16–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 12, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before [September 17, 2010]. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0166.

Title: Part 42 – Preservation of Records of Communications Common Carriers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 56 respondents; 56 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. section 220.

Total Annual Burden: 112 hours.
Total Annual Cost: N/A.
Privacy Act Impact Assessment: N/A.
Nature and Extent of Confidentiality: Ordinarily questions of a sensitive nature are not involved in the preservation of records of communications common carriers. The Commission contends that areas in which detailed information is required are fully subject to regulation and the issue of data being regarded as sensitive will arise in special circumstances only. In such circumstances, the respondent is instructed on the appropriate procedures to follow to safeguard sensitive data. For procedures for requesting confidential treatment of data, go to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. There is no change to the Commission's burden estimates.

Section 220 of the Communications Act of 1934, as amended, makes it unlawful for carriers to willfully destroy information retained for the Commission. Part 42 of the Commission's rules prescribes guidelines to ensure that carriers maintain the necessary records needed by the FCC for its regulatory obligations.

Section 42.2 requires a carrier to: (1) Maintain at its operating company headquarters a master index of records which identifies the records retained, the related retention period, and the locations where the records are maintained; and (2) to explain the premature loss or destruction of any records by adding a certified statement to the index listing the lost records and describing the circumstances of the loss.

Section 42.5 requires that records kept in a machine–readable medium be accompanied by a statement indicating the type of data included in the record and certifying that the information contained in it has been accurately duplicated.

Section 42.6 requires a carrier to retain telephone toll records for 18 months that are necessary to provide the following billing information about telephone toll calls; the name, address, and telephone number of the caller, telephone number called, date, time and length of the call.

Section 42.7 allows a carrier to establish its own retention periods for all of its records, except records of telephone toll calls and records relevant to complaint proceedings.

Section 42.10 requires a nondominant interexchange carrier (IXC) to make available to the public, in at least one location, during normal business hours, information on the current rates, terms, and conditions for all of its interstate, domestic interexchange services. The information also must be made available on a carriers Internet website.

Section 42.11 requires that a nondominant IXC maintain, for submission to the Commission and to state regulatory commissions upon request, price and service information regarding all of the carrier's international and interstate, domestic, interexchange service offerings. (Both 47 CFR sections 42.10 and 42.11 are approved under OMB control number 3060–0704.)

Documentation of premature records destruction is necessary so that the Commission can be aware of the frequency and consequences of such destruction. If carriers were allowed to destroy records at will, the Commission could lose historical information, thus making it impossible to regulate the industry properly. A specific retention period for telephone toll records of eighteen months is imposed to assist Department of Justice in law enforcement. See section 42.6 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–17458 Filed 7–16–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;Proposed Collection; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC seeks public comments on its proposal to extend through December 31, 2013 the current OMB clearance for information collection requirements contained in its Affiliate Marketing Rule (or "Rule"). That clearance expires on December 31, 2010.

DATES: Comments must be filed by September 17, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://ftcpublic.commentworks.com/AffiliateMarketingPRA*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Anthony Rodriguez, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-2757.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to submit written comments. Comments should refer to "Affiliate Marketing Rule: FTC File No. P105411" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly

labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink (*https://ftcpublic.commentworks.com/AffiliateMarketingPRA*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://ftcpublic.commentworks.com/AffiliateMarketingPRA*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 17, 2010.

Background

The Affiliate Marketing Rule, 16 CFR Part 680, was proposed by the FTC under section 214 of the Fair and Accurate Credit Transactions Act ("FACT Act"), Pub. L. No. 108-159 (December 6, 2003). The FACT Act amended the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, which was enacted to enable consumers to protect the privacy of their consumer credit information. As mandated by the FACT Act, the Rule specifies disclosure requirements for certain affiliated companies subject to the Commission's jurisdiction. Except as discussed below, these requirements constitute "collections of information" for purposes of the PRA. Specifically, the FACT Act and the Rule require covered entities to provide consumers with notice and an opportunity to opt out of the use of certain information before sending marketing solicitations. The Rule generally provides that, if a company communicates certain information about a consumer ("eligibility information") to an affiliate, the affiliate may not use that information to make or send solicitations to the consumer unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out.

To minimize compliance costs and burdens for entities, particularly any small businesses that may be affected, the Rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The Rule also gives covered entities flexibility to satisfy the notice and opt-out requirement by sending the consumer a free-standing opt-out notice or by adding the opt-out notice to the privacy notices already provided to consumers, such as those provided in accordance with the provisions of Title V, subtitle A of the GLBA. In either event, the time necessary to prepare or incorporate an opt-out notice would be minimal because those entities could either use the model disclosure verbatim or base their own disclosures upon it. Moreover, verbatim adoption of the model notice does not constitute a PRA "collection of information."[2]

Burden statement:

Except where otherwise specifically noted, staff's estimates of burden are based on its knowledge of the consumer credit industries and knowledge of the entities over which the Commission has jurisdiction. This said, estimating PRA burden of the Rule's disclosure requirements is difficult given the highly diverse group of affected entities that may use certain eligibility information shared by their affiliates to send marketing notices to consumers.

The estimates provided in this burden statement may well overstate actual burden. As noted above, verbatim adoption of the disclosure of information provided by the Federal government is not a "collection of information" to which to assign PRA burden estimates, and an unknown number of covered entities will opt to use the model disclosure language. Second, an uncertain, but possibly significant, number of entities subject to the FTC's jurisdiction do not have affiliates and thus would not be covered by section 214 of the FACT Act or the Rule. Third, Commission staff does not know how many companies subject to the FTC's jurisdiction under the Rule actually share eligibility information among affiliates and, of those, how many affiliates use such information to make marketing solicitations to consumers. Fourth, still other entities may choose to rely on the exceptions to the Rule's notice and opt-out requirements.[3] Finally, the population estimates below to apply further calculations are based on industry data that, while providing tallies of business

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] "The public disclosure of information originally supplied by the Federal government to the recipient for purpose of disclosure to the public is not included within [the definition of collection of information]." 5 CFR 1320.3(c)(2).

[3] Exceptions include, for example, having a preexisting business relationship with a consumer, using information in response to a communication initiated by the consumer, and solicitations authorized or requested by the consumer.

entities within industries and industry segments, does not identify those entities individually. Thus, there is no clear path to ascertain how many individual businesses have newly entered and departed within a given industry classification, from one year to the next or from one triennial PRA clearance cycle to the next. Accordingly, there is no ready way to quantify how many establishments accounted for in the data reflects those previously accounted for in the FTC's prior PRA analysis, *i.e.*, entities that would already have experienced a declining learning curve applying the Rule with the passage of time. For simplicity, the FTC analysis will continue to treat covered entities as newly undergoing the previously assumed learning curve cycle, although this would effectively overstate estimated burden for unidentified covered entities that have remained in existence since OMB's most recently issued PRA clearance for the Rule.[4]

As in the past, FTC staff's estimates assume a higher burden will be incurred during the first year of a prospective OMB three-year clearance, with a lesser burden for each of the subsequent two years because the opt-out notice to consumers is required to be given only once. Institutions may provide for an indefinite period for the opt-out or they may time limit it, but for no less than five years.

Staff's labor cost estimates take into account: managerial and professional time for reviewing internal policies and determining compliance obligations; technical time for creating the notice and opt-out, in either paper or electronic form; and clerical time for disseminating the notice and opt-out.[5] In addition, staff's cost estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the cost of compliance. Moreover, the Rule gives entities considerable flexibility to determine the scope and duration of the opt-out. Indeed, this flexibility permits entities to send a single joint notice on behalf of all of its affiliates.

Estimated total average annual hours burden: 1,043,961 hours

Based, in part, on industry data regarding the number of businesses under various industry codes, staff estimates that 1,101,780 non-GLBA entities under FTC jurisdiction have affiliates and would be affected by the Rule.[6] Staff further estimates that there are an average of 5 businesses per family or affiliated relationship, and that the affiliated entities will choose to send a joint notice, as permitted by the Rule. Thus, an estimated 220,356 non-GLBA business families may send the affiliate marketing notice. Staff also estimates that non-GLBA entities under the jurisdiction of the FTC would each incur 14 hours of burden during the prospective requested three-year PRA clearance period, comprised of a projected 7 hours of managerial time, 2 hours of technical time, and 5 hours of clerical assistance.

Based on the above, total burden for non-GLBA entities during the prospective three-year clearance period would be approximately 3,084,984 hours, cumulatively. Associated labor cost would total $100,841,592.[7] These estimates include the start-up burden and attendant costs, such as determining compliance obligations. Non-GLBA entities, however, will give notice only once during the clearance period ahead. Thus, averaged over that three-year period, the estimated annual burden for non-GLBA entities is 1,028,328 hours and $33,613,864 in labor costs.[8]

Entities that are subject to the Commission's GLBA privacy notice regulation already provide privacy notices to their customers.[9] Because the FACT Act and the Rule contemplate that the affiliate marketing notice can be included in the GLBA notices, the burden on GLBA regulated entities would be greatly reduced. Accordingly, the GLBA entities would incur 6 hours of burden during the first year of the clearance period, comprised of a projected 5 hours of managerial time and 1 hour of technical time to execute the notice, given that the Rule provides a model.[10] Staff further estimates that 3,350 GLBA entities under the FTC's jurisdiction would be affected,[11] so that the total burden for GLBA entities during the first year of the clearance period would approximate 20,100 hours and $850,364 in associated labor costs.[12] Allowing for increased familiarity with procedure, the PRA burden in ensuing years would decline, with GLBA entities each incurring an estimated 4 hours of annual burden (3 hours of managerial time and 1 hour of technical time) during the remaining two years of the clearance, amounting to 13,400 hours and $558,244 in labor costs in each of the ensuing two years. Thus, averaged over the three-year clearance period, the estimated annual burden for GLBA entities is 15,633 hours and $655,618 in labor costs.

Cumulatively for both GLBA and non-GLBA entities, the average annual burden over the prospective three-year clearance period is 1,043,961 burden hours and $34,269,482 in labor costs. GLBA entities are already providing notices to their customers so there are no new capital or non-labor costs, as this notice may be consolidated into their current notices. For non-GLBA entities, the Rule provides for simple and concise model forms that

[4] On December 27, 2007, OMB granted three years' clearance for the Rule under Control No. 3084-0131.

[5] No clerical time was included in staff's burden analysis for GLBA entities as the notice would likely be combined with existing GLBA notices.

[6] This estimate is derived from an analysis of a database of U.S. businesses based on SIC codes for businesses that market goods or services to consumers, which included the following industries: transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services). *See* (*http://www.naics.com/search.htm*). This estimate excludes businesses not subject to the FTC's jurisdiction and businesses that do not use data or information subject to the rule. To the resulting sub-total (6,677,796), staff applies a continuing assumed rate of affiliation of 16.75 percent, *see* 69 FR 33324, 33334 (June 15, 2004), reduced by a continuing estimate of 100,000 entities subject to the Commission's GLBA privacy notice regulations, *see id.*, applied to the same assumed rate of affiliation. The net total is 1,101,780.

[7] The associated labor cost is based on the labor cost burden per notice by adding the hourly mean private sector wages for managerial, technical, and clerical work and multiplying that sum by the estimated number of hours. The classifications used are "Management Occupations" for managerial employees, "Computer and Mathematical Science Occupations" for technical staff, and "Office and Administrative Support" for clerical workers. *See* National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor released August 2009, Bulletin 2720,Table 3 ("Summary: Full-time civilian workers: Mean and median hourly, weekly, and annual earnings and mean weekly and annual hours") (*http://www.bls.gov/ncs/ocs/sp/nctb0717.pdf*). The respective private sector hourly wages for these classifications are $43.60, $35.84, and $16.15. Estimated hours spent for each labor category are 7, 2, and 5, respectively. Multiplying each occupation's hourly wage by the associated time estimate, labor cost burden per notice equals $457.63. This subtotal is then multiplied by the estimated number of non-GLB business families projected to send the affiliate marketing notice (220,356) to determine cumulative labor cost burden for non-GLBA entities ($100,841,592).

[8] 3,084,984 hours ÷ 3 = 1,028,328; $100,841,592÷ 3 = $33,613,864.

[9] Financial institutions must provide a privacy notice at the time the customer relationship is established and then annually so long as the relationship continues. Staff's estimates assume that the affiliate marketing opt-out will be incorporated in the institution's initial and annual notices.

[10] As stated above, no clerical time is included in the estimate because the notice likely would be combined with existing GLBA notices.

[11] Based on the previously stated estimates of 100,000 GLBA business entities at an assumed rate of affiliation of 16.75 percent (16,750), divided by the presumed ratio of 5 businesses per family, this yields a total of 3,350 GLBA business families subject to the Rule.

[12] 3,350 GLBA entities x [($43.60 x 5 hours) + ($35.84 x 1 hour)] = $850,364.

institutions may use to comply. Thus, any capital or non-labor costs associated with compliance for these entities are negligible.

Willard K. Tom,

General Counsel.

[FR Doc. 2010–17466 Filed 7–16–10; 8:45 am]

BILLING CODE 6750–01–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–1262]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date and agenda of its Consumer Advisory Committee ("Committee"). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Committee will take place on Wednesday August 4, 2010, 2 p.m. to 4 p.m., at the Commission's Headquarters Building, Room 3B516.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *Scott.Marshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 10–1262 released July 6, 2010, announcing the agenda, date and time of the Committee's next meeting.

At its August 4, 2010 meeting, the Committee will complete unfinished business from its June 30, 2010 meeting, specifically consideration of two recommendations: One regarding consumer information disclosures to be filed in CG Docket 09–158 and a second regarding the Lifeline and Link-up programs. The Committee may also consider other matters within the jurisdiction of the Commission. A limited amount of time on the agenda will be available for oral comments from the public attending at the meeting site. It is anticipated that out-of-town Committee members will participate via teleconference, with members local to the FCC Headquarters Building participating in person. A limited amount of space in the meeting room will be available for members of the public.

The Committee is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at *scott.marshall@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2010–17570 Filed 7–16–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 10–51; FCC 10–111]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission takes a fresh look at its video relay service (VRS) rules so that the Commission can ensure that this vital program is effective, efficient, and sustainable in the future. VRS allows persons with hearing or speech disabilities to use American Sign Language (ASL) to communicate with friends and family and to conduct business in near real time. In this proceeding, the Commission seeks to improve the program to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently so as to be less susceptible to the waste, fraud, and abuse that plague the current program and threaten its long-term viability. The Commission's goal is to solicit a wide range of thoughts and proposals for making the program work better for those who could benefit from it and those who pay into it.

DATES: Comments are due on or before August 18, 2010. Reply comments are due on or before August 3, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554

You may submit comments, identified by [CG Docket number 10–51 and/or FCC Number 10–111, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 10–51.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response. In addition, parties submitting an electronic copy must send a copy of such filing to (1) Mark Stone, Consumer and Governmental Affairs Bureau, *mark.stone@fcc.gov*; (2) Nicholas Alexander, Wireline Competition Bureau, *nicholas.alexander@fcc.gov*;
(3) Diane Mason, Consumer and Governmental Affairs Bureau, *diane.mason@fcc.gov*; and (4) Nicholas A. Degani, Wireline Competition Bureau, *nicholas.degani@fcc.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. In addition, parties must send one copy of each pleading to: the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554.

• All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 (voice), (202) 418–7828 (TTY), or e-mail at *Diane.Mason@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program,* Notice of Inquiry, document FCC 10–111, adopted on June 8, 2010, and released on June 28, 2010, in CG Docket No. 10–51. The full text of document FCC 10–111 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or e-mail *http://www.bcpiweb.com*. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments regarding document FCC 10–111 on or before the dates indicated on the first page of this document. *All filings related to this Notice should refer to CG Docket No. 10–51. The Commission strongly encourages parties to develop responses to this Notice that adhere to the organization and structure of this Notice.* Furthermore, the Commission is specifically interested in concrete data or analyses that respond to the questions in this Notice.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (tty).

Paperwork Reduction Act. Document FCC 10–111 does not contain proposed information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

1. The Commission presents document FCC 10–111 in two parts. In part I, the Commission asks broad questions on exactly how VRS providers should be compensated if the Commission retains the current, multiple provider model for delivering VRS. In part II, the Commission asks whether it should consider fundamental changes to the delivery of VRS and market structure for the service. In both parts, the Commission's objective is to find ways to ensure that this vital program is effective, efficient, and sustainable. The Commission specifically seeks comment on the most effective and efficient way to make VRS available and to determine what is the most fair, efficient, and transparent cost recovery methodology. The Commission expects to complete this proceeding before Interstate TRS Fund (Fund) year 2011–12, which begins on July 1, 2011.

Part I—Adjustments and Modifications to Improve the Current Video Relay Service Compensation Methodology

2. *Accounting Issues.* In this section, the Commission asks a series of questions about appropriate accounting methods for VRS providers. The Commission suggests that VRS providers should all be incurring the same types of compensable costs, and seeks comment on the extent to which this is the case. The Commission also seeks comment on whether part 32 continues to provide the best system of accounting for VRS providers, along with what specific sub-accounts are appropriate to require for all VRS providers. Next, the Commission seeks comment on whether it should set reasonableness limits on the compensability of costs in total or for specific cost categories, and on whether the Commission should set limits for other types of costs, such as cash working capital, building costs and dividend payments.

3. *Company-Specific Compensation.* The Commission seeks comment on whether to establish company-specific compensation for each provider, in order to establish a fairer methodology for all providers and to achieve greater accuracy in matching compensation to costs than an averaged or three-tiered system. Among other things, this section asks commenters to address the extent to which the tiered system should continue as is, whether a company-specific compensation methodology that continues to disburse funds based on minutes of use would require company-specific demand projections, or whether this type of compensation methodology could be based on historical demand, adjusted by an industry-wide projected growth factor to establish the size of the fund. The Commission also seeks comment on the proper use of historical cost information, including whether historical costs should be used to establish compensation rates to achieve the efficient delivery of VRS; the factors that should be applied to historical costs to develop reasonable projected costs; and how demand growth factors can be considered relevant to provider compensation.

4. *Outreach and Marketing Costs.* The Commission seeks comment on whether, and the extent to which, the Fund should compensate providers for outreach and marketing activities, including whether such funding should be capped for each provider.

5. *Research and Development Costs.* Newly emerging communication technologies could offer significant potential for achieving greater functional equivalency for VRS users, and we recognize that Congress has directed the Commission to ensure that its TRS regulations do not discourage or impair the development of improved technology. The Commission therefore seeks comment on whether and, if so, the extent to which, the Commission should revise its rules to explicitly permit compensation for research and development, as well as what controls

the Commission should put in place to ensure that such compensation is provided equitably across all VRS providers.

6. *Videophone Equipment.* In this section, the Commission asks about the cost, quality and availability of different videophones and how these compare with voice telephones. It also seeks comment on actions the Commission should take to ensure that affordable videophone equipment is available to VRS users, and the extent to which efforts should be made to switch VRS users over to mainstream video technology so they can acquire phones from retail establishments rather than be dependent on individual providers for their phones.

7. *Protection of Providers from Under-Compensation and Avoidance of Over-Compensation.* The Commission seeks comment on ways to prevent providers from being under- or over-compensated. For example, the Commission asks about using a "true up" and whether it should continue the current process for allowing providers a rate-of-return on capital investment. Commenters should address the administrative burdens, as well as the potential benefits of their proposals.

8. *Certification.* The Commission's rules currently allow potential VRS providers to receive compensation from the Interstate TRS Fund if they: (a) become part of a certified state program, (b) subcontract for another entity eligible to provide TRS, or (c) receive certification directly from the Commission. The Commission is concerned that the current certification process does not offer adequate oversight and assurance that certified VRS providers are offering satisfactory service and are only seeking reimbursement for authorized service. The Commission asks how the Commission's rules should be changed to sufficiently deter potential fraud and abuse.

Part II—Broader and Economic Issues Concerning Video Relay Service

9. In this part, the Commission asks whether it should consider fundamental changes to the delivery of VRS, including questions on the structure of the VRS market. The Commission focuses on three key issues. Among other things, the Commission seeks to ensure that the VRS program fully serves the needs of its intended users as well as it can, to improve the efficiencies of this program, and to reduce opportunities for fraud and abuse.

The Components of Video Relay Service

10. VRS communications require the interaction of three separate yet interlinked components: videophone equipment, video communication service, and ASL relay interpreter service. Although some VRS providers now supply all three components as a single package, we question whether this vertical integration is necessary, and therefore separate them for purposes of the analysis herein.

11. *Videophone Equipment.* The Commission seeks to understand the types of videophone equipment most used by deaf and hard-of-hearing individuals, what functionalities they need, and what role standards-setting should play with respect to protocols and functionalities. The Commission specifically seeks comment on whether it is feasible for the Commission to adopt technical standards that would ensure the continuation of videophone equipment functionality after a consumer switches default providers. The Commission also seeks to understand the extent to which VRS users are limited to using videophone equipment specifically designed for VRS use, as well as the extent to which changes in the VRS program should occur that would allow users to utilize off-the-shelf equipment for VRS calls.

12. *Video Communication Service.* The Commission asks about the functionalities that VRS users need from video communication service providers, and the extent to which the separation of broadband transmission service from VRS affects what constitutes functionally equivalent service. Several years ago, interconnected Voice over Internet Protocol (VoIP) was primarily provided as an over-the-top, nomadic service. Today, many facilities-based broadband providers offer interconnected VoIP with quality-of-service guarantees. The Commission asks whether video communication service will witness a comparable transition in the near future

13. *Relay Interpreter Service.* The Commission asks about the functionalities that VRS users need from ASL relay interpreter services, and the extent to which CAs have met the quality-of-service expectations of VRS users. Parties are also asked to provide feedback on ways that the needs of VRS users may evolve over the next three to five years.

14. *General View of VRS Components.* Looking at these components together, the Commission asks how and why VRS users currently choose or switch their providers, including how the incentives and costs associated with switching VRS providers differ from the incentives and costs of switching other video communications service providers. Is there any need for the three components described above to be vertically integrated?

The Demand for Video Relay Service

15. In this section, the Commission seeks data about (1) The number of current VRS users; (2) the extent to which there may be technological barriers to using VRS; (3) the trends in VRS minutes of use per user over time; and (4) to what extent potential VRS users are meeting their communications needs through other means. The Commission also seeks information about other reasons why potential users do not actually use VRS.

The Supply of Video Relay Service

16. In this section, the Commission seeks to understand the provision of VRS from a supplier's perspective and the obstacles that might limit competition among VRS providers or otherwise reduce efficiency in the provision of this service. Among other things, the Commission notes that under the present VRS model, multiple providers offer substantially similar services with no opportunity for price competition. In undertaking this review, the Commission considers each of the three components described earlier, *i.e.,* relay interpreter service, video communications service, and videophone equipment.

The Regulation of Video Relay Service

In this section, the Commission seeks to understand how its regulations, including the current regime for compensating VRS providers, have affected the structure of the market and demands on the Fund.

17. *Paying for VRS Today.* The Interstate TRS Fund compensates VRS providers using an industry-wide per-minute rate each year. The Commission seeks comment on the existing TRS reimbursement structure and on other aspects of its regulation of VRS.

18. *The Principle of Cost-Causation.* The Commission seeks comment on whether the cost-recovery aspects of its current VRS regulations may distort the incentives of VRS providers and, in turn, may affect the expectations of users. When a cost causer does not internalize all the costs it causes, the incentives of both providers and users may be distorted. The Commission is concerned that its VRS compensation rules may have created such economic distortions.

The Incentives of Providers

19. The Commission wants to ensure not only that the VRS program is available and fully responsive to the needs of people with hearing and speech disabilities, but also that the use of VRS is driven by real demand, not artificial stimulation. The Commission seeks comment on what measures it should take to better realize the goal of reimbursing VRS providers for the costs of providing relay service, to ensure that VRS providers have incentives to provide and promote use of VRS, without creating incentives for VRS providers to encourage high-volume use that VRS users would otherwise not incur. The Commission is particularly interested in knowing: (1) How it can encourage competition that would reduce the costs of VRS; (2) how it can channel the efforts of VRS providers to foster innovation and improve services for VRS users; (3) what data or analyses are particularly important to understand in choosing how to restructure the VRS market to improve its efficiency and effectiveness; (4) if the Commission decides to modify either what constitutes VRS or the regulation of VRS, how it should structure the transition to avoid service disruptions; and (5) what institutional oversight is required at the federal and state level, and how extensive must that oversight be to combat waste, fraud, and abuse.

20. *Choice of VRS Provider.* The Commission seeks comment on whether, if it decided to use competitive bids to award VRS contracts to a single provider or a limited number of providers, there are ways to ensure that consumers would still be able to receive functionally equivalent service. In addition, it seeks comment on whether competitive bidding or a single contract model could work for certain components of VRS communications, such as the relay interpreter component. Furthermore, it solicits comment on how, if such a contract were to be awarded, the contract should pay the winning bidder (*e.g.,* using a flat, fixed fee for service, a per-minute compensation rate, a per-user compensation rate, or some other method).

21. *Other Models.* The Commission seeks comment on the merits of applying rate-of-return regulation, modified price cap regulation, forward-looking cost model support, or reverse auctions to the provision of VRS. The Commission also seeks comment on whether structural and accounting safeguards might be effective at encouraging efficiency in the VRS market. Finally, the Commission seeks comment on issues related to jurisdictional separations, insofar as the Commission has thus far treated all VRS calls as interstate calls paid for by the Fund.

The Incentives and Needs of VRS Users

22. The Commission seeks comment in this section on how to better align the incentives of VRS users with cost-causation principles. The Commission first seeks input on how to ensure that it properly identifies functionally equivalent voice services and rates. The Commission then seeks comment on how to structure any federal subsidies to ensure that VRS providers meet the needs of VRS users without over-compensating VRS providers.

23. *Videophone Equipment.* In Part I, the Commission asks numerous questions concerning the current functionalities, costs, and distribution of videophone equipment. These same questions equally apply to the Commission's consideration of changes to the structure of the VRS program in the future, and are inherently intertwined with questions regarding what is the most effective, efficient, and sustainable structure.

24. *Individual Subsidies and Vouchers.* The Commission seeks comment on whether VRS users would be better served if the Commission did not subsidize particular components of VRS communications, but instead directly subsidized the VRS needs of those individuals. The Commission also seeks input on whether it should issue vouchers directly to deaf and hard-of-hearing individuals to spend on the end user equipment and other components of the TRS program, such as broadband Internet access service.

25. *Consumer Incentives.* The Commission seeks comment on whether, if this is not already the case, the incentives for VRS use need to be aligned with the cost of providing the service in a way that makes the use of this service comparable to the use of voice communications services. In this regard, the Commission seeks comment on whether the lack of usage restrictions on VRS creates any incentives for VRS use that do not exist for voice telephone use. The Commission also seeks comment on whether the cost of broadband service as a prerequisite for VRS use is a disincentive for potential VRS users to use VRS.

Other Regulations Affecting VRS Communications

The Commission seeks input on the effect of its VRS user registration requirements on competition among VRS providers in the various components. In addition, it asks whether it should impose additional reporting requirements on VRS providers, for example separately reporting each driver of the Fund (number of users, compensable minutes of use per user, and estimated cost per minute of use). Finally, the Commission seeks comment on what other VRS regulations it should adopt or modify now to prepare for the future.

Ordering Clause

Pursuant to sections 4(i)–(j), 201(b), 225, and 303(r), 47 U.S.C. 154(i)–(j), 201(b), 225, and 303(r), document FCC 10–111 *is adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–17575 Filed 7–16–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Carroll County Bancshares, Inc., Carrollton, Missouri; to acquire 20 percent of the voting shares of Adams Dairy Bank, Blue Springs, Missouri, and thereby engage in the operation of a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 14, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–17482 Filed 7–16–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 1 p.m. (Eastern Time) July 19, 2010.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: All parts will be open to the public.

MATTERS TO BE CONSIDERED: Parts Open to the Public

1. Approval of the minutes of the June 21, 2010 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report
   b. Legislative Report
3. Quarterly Reports.
   a. Investment Policy Review
   b. Vendor Financial Report

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 9, 2010.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2010–17588 Filed 7–15–10; 11:15 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information on Development of an Inventory of Comparative Effectiveness Research

AGENCY: Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Request for Information.

SUMMARY: The Office of the Assistant Secretary for Planning Evaluation (ASPE) is developing a national inventory of comparative effectiveness research (CER) and CER-related information. This initiative is driven by the American Recovery and Reinvestment Act of 2009 (ARRA) which provided $1.1 billion for research and development in the area of CER. ARRA allocated $400 million to the Office of the Secretary (OS) in the U.S. Department of Health and Human Services (HHS), $400 million to the National Institutes of Health (NIH), and $300 million to the Agency for Healthcare Research and Quality. ARRA also established the Federal Coordinating Council for CER, which, after significant public input, developed a strategic framework and recommended high-level priorities for OS funds. While the FCC's Report to Congress drew on an initial CER inventory focused on federal investments, the process of cataloguing CER activities and infrastructure will be critical to tracking ongoing and future investments in CER. An important component of this effort is creating an inventory of CER to ensure that patients, clinicians, and other decision makers can identify and locate relevant CER in a timely manner.

ASPE seeks input on approaches to developing a CER Inventory that capture ongoing and existing CER in the United States. This inventory will be accessible to the public, including patients, clinicians, and policymakers, through a web-based system. Comments should focus on appropriate resources and approaches for developing the CER Inventory, rather than the methodology of CER or suggestions for particular CER studies that should be included in the CER Inventory. Requested information includes suggestions regarding sources of CER and ways to encourage participation in the inventory; comments related to categorizing content; and approaches to ensure the CER Inventory is useful and sustainable over time.

DATES: Submit comments by 11:59 p.m. Eastern Time on August 9, 2010.

ADDRESSES: Written or electronic comments should be submitted to HHS as directed below.

Comments should be identified by referring to the "CER Inventory", and may be submitted to the Department of HHS by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments (one original and two copies) may be mailed to: Department of Health and Human Services, Attention: CER Inventory, Hubert H. Humphrey Building, Room 447–D, 200 Independence Avenue, SW., Washington, DC 20201.
- *Hand or courier delivery:* Comments may be delivered to Room 447–D, Department of Health and Human Services, Attention: CER Inventory, Hubert H. Humphrey Building, Room 447–D, 200 Independence Avenue, SW., and Washington, DC 20201. Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CER Inventory drop box located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.

Written submissions should be brief (no more than three pages per submission), and should be in the form of a letter. Please do not submit duplicate comments. Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Consequently, comments should not include any sensitive health information from medical records or other individually identifiable health information, or any non-public, corporate or trade association information, such as trade secrets or other proprietary information. Comments may be submitted anonymously.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. All comments will be made available publicly on the internet at *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

FOR FURTHER INFORMATION CONTACT: Pierre Yong, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, (202) 690–8384, *Pierre.Yong@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The American Recovery and Reinvestment Act of 2009 (ARRA) provided funding of $1.1 billion for CER and related activities, and established the Federal Coordinating Council for Comparative Effectiveness Research, which defined CER as the:

Conduct and synthesis of research comparing the benefits and harms of different interventions and strategies to prevent, diagnose, treat and monitor health conditions in "real world" settings. The purpose of CER

is to improve health outcomes by developing and disseminating evidence-based information to patients, clinicians, and other decision-makers, responding to their expressed needs, about which interventions are most effective for which patients under specific circumstances.

• To provide this information, comparative effectiveness research must assess a comprehensive array of health-related outcomes for diverse patient populations and sub-groups.

• Defined interventions compared may include medications, procedures, medical and assistive devices and technologies, diagnostic testing, behavioral change, and delivery system strategies.

• This research necessitates the development, expansion, and use of a variety of data sources and methods to assess comparative effectiveness and actively disseminate the results.[1]

The FCC Report to Congress additionally described the criteria for prioritization of potential CER investments, a strategic framework for CER activity, and high-level priority recommendations for OS funds (*http://www.hhs.gov/recovery/programs/cer/cerannualrpt.pdf*). Because CER is inherently multi-disciplinary, the Department recognizes the importance of highlighting research that informs CER, including relevant published literature as well as ongoing research activity. To fulfill this goal the CER Inventory is intended to be a living document that will both facilitate access to CER for interested stakeholders; and assist in identifying priorities and gaps for future research. The goal is to routinize the inventory process, allow for easy updating and identifying gaps, and create a system that is sustainable. Connecting users to CER information via a publicly available, searchable online tool is an efficient approach to disseminating this breadth of information.

II. Request for Information

The Department of HHS is inviting public comment to aid in the development of the content and structure of the CER Inventory. This notice specifically requests suggestions for potential sources of information on ongoing and completed CER; ways to encourage participation in the Inventory; approaches to categorizing information; and ways to ensure that the CER Inventory is useful and sustainable.

[1] U.S. Department of Health and Human Services. Federal Coordinating Council for Comparative Effectiveness Research. *Report to the President and the Congress.* June 30, 2009. *http://www.hhs.gov/recovery/programs/cer/cerannualrpt.pdf.*

ASPE is developing a system to catalog CER activities including ongoing and completed CER. The CER Inventory will be publicly available, and will be designed for a diverse community of stakeholders including researchers, policy makers, decision-makers, health care providers, patients, and consumers. The CER Inventory will include records (*e.g.,* abstracts and other summary descriptive information) of CER and information related to CER, including research and resources on methods and training for CER, data infrastructure and databases to support CER, and methods and approaches for translation and dissemination of CER to help inform healthcare decisions and policies.

The information provided in response to this notice will be used to plan and develop the CER Inventory in order to ensure that it meets the needs of such users as researchers, policy makers, decision-makers, health care providers, patients, and consumers. We are seeking public comment on the following issues:

1. Sources for CER. The CER Inventory will draw electronically on existing sites (*e.g.,* PubMed, HSRProj, and Clinicaltrials.gov) and will also permit direct entry of information. Please identify any sources of information, such as relevant sources of gray literature or research databases from private foundations, that would help meet the goals of the CER Inventory.

2. Encouraging participation/submission. What incentives would encourage the contribution of CER research abstracts and other relevant documents into the CER Inventory?

3. Categorization. CER projects and resources should be categorized in a manner that ensures that individuals from diverse backgrounds with varying levels of technical expertise (*e.g.,* researchers, policy makers, clinicians, and patients and consumers) can access relevant information. How might such a categorization scheme and approach be designed? Please comment on the rationale behind suggested categorization schemes.

4. Data elements. Are there specific types of data or information regarding records or descriptions of CER entered into the CER Inventory that should be captured and available to users? Please identify key data and information, if any.

5. Features. Are there features of a web-based CER Inventory that would promote long-term use among the intended audiences?

6. Sustainability. What approaches or business models would provide for a sustainable inventory over time?

7. Additional considerations. Are there potential drawbacks, unintended consequences, or other specific issues that may limit participation in the CER Inventory?

The information submitted in response to this RFI will inform the planning and development of the CER Inventory to ensure that the resource meets the needs of the intended users, is accessible, and is easy to use.

Dated: July 9, 2010.

Sherry A. Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–17244 Filed 7–16–10; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail paperwork@hrsa.gov or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Black Lung Clinics Program Database (OMB No. 0915–0292)—Extension

The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, conducts an annual

data collection of user information for the Black Lung Program, which has been ongoing with OMB approval since 2004. The purpose of the Black Lung Clinic Program is to improve the health status of coal workers by providing services to minimize the effects of respiratory and pulmonary impairments of coal miners, treatment procedures required in the management of problems associated with black lung disease which improves the quality of life of the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases. The purpose of collecting this data is to provide HRSA with information on how well each grantee is meeting the needs of active and retired miners in the funded communities.

Data from the annual report will provide quantitative information about the programs, specifically: (a) The characteristics of the patients they serve (gender, age, disability level, occupation type); (b) the characteristics of services provided (medical encounters, non-medical encounters, benefits counseling, or outreach); and (c) the number of patients served. The annual report will be updated to include a qualitative measure on the percent of patients that show improvement in pulmonary function. This assessment will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993. It will also ensure that funds are being effectively used to provide services to meet the needs of the target population.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Database	15	1	1	10	150

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 13, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–17527 Filed 7–16–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Data Collection Plan for the Customer Satisfaction Evaluation of Child Welfare Information Gateway.

OMB No.: 0970–0303.

Description: The National Clearinghouse on Child Abuse and Neglect Information (NCCAN) and the National Adoption Information Clearinghouse (NAIC) received OMB approval to collect data for a customer satisfaction evaluation under OMB control number 0970–0303. On June 20, 2006, NCCAN and NAIC were consolidated into Child Welfare Information Gateway (Information Gateway).

The proposed information collection activities include revisions to the Customer Satisfaction Evaluation approved under OMB control number 0970–0303 to reflect current information needs for providing innovative and useful products and services.

Child Welfare Information Gateway is a service of the Children's Bureau, a component within the Administration for Children and Families, and Information Gateway is dedicated to the mission of connecting professionals and concerned citizens to information on programs, research, legislation, and statistics regarding the safety, permanency, and well-being of children and families.

Information Gateway's main functions are identifying information needs, locating and acquiring information, creating information, organizing and storing information, disseminating information, and facilitating information exchange among professionals and concerned citizens. A number of vehicles are employed to accomplish these activities, including, but not limited to, website hosting, discussions with customers (*e.g.* phone, live chat, *etc.*), and dissemination of publications (both print and electronic).

The Customer Satisfaction Evaluation was initiated in response to Executive Order 12862 issued on September 11, 1993. The Order calls for putting customers first and striving for a customer-driven government that matches or exceeds the best service available in the private sector. To that end, Information Gateway's evaluation is designed to better understand the kind and quality of services customers want, as well as customers' level of satisfaction with existing services. The proposed data collection activities for the evaluation include customer satisfaction surveys, customer comment cards, selected publication surveys, and focus groups.

Respondents: Child Welfare Information Gateway customers.

ANNUAL BURDEN ESTIMATES

Instrument	Affected public	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Customer Survey (Web site, E-mail, Print, Live Chat, and Phone).	Individuals/Households	846	1	0.078	66
	Private Sector	182	1	0.078	14
	State, Local, or Tribal Governments	187	1	0.078	15
Publication Survey	Individuals/Households	86	1	0.052	4
	Private Sector	19	1	0.052	1
	State, Local, or Tribal Governments	19	1	0.052	1
Comment Card	Individuals/Households	300	1	0.014	4
	Private Sector	65	1	0.014	1

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Affected public	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
(General Web and Conference versions).	State, Local, or Tribal Governments	66	1	0.014	1
Online Tool/Web Section Survey	Individuals/Households	229	1	0.052	12
	Private Sector	30	1	0.052	2
	State, Local, or Tribal Governments	28	1	0.052	1
Webinar Feedback Survey	Private Sector	597.5	1	0.052	31
	Federal Government	1,049.5	1	0.052	55
General Focus Group Guide	Private Sector	12	1	1.0	12
	State, Local, or Tribal Governments	12	1	1.0	12
User Needs Assessment Focus Group Guide.	Private Sector	12	1	1.0	12
	State, Local, or Tribal Governments	12	1	1.0	12
Customer Services Information Questions.	Individuals/Households	2,730	1	0.014	38
	Private Sector	608.4	1	0.014	9
	State, Local,or Tribal Governments	561.6	1	0.014	8

Total Estimated Annual Burden Hours: 311.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.*

Dated: July 6, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–17293 Filed 7–16–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institute of Diabetes and Digestive and Kidney Diseases Information Clearinghouses Customer Satisfaction Survey

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), is giving public notice that the agency proposes to request reinstatement of an information collection activity for which approval expired on February 28, 2010.

Proposed Collection: Title: NIDDK Information Clearinghouses Customer Satisfaction Survey. *Type of Information Requested:* Reinstatement, with change, of a previously approved collection for which approval has expired. The OMB control number 0925–0480 expired on February 28, 2010. *Need and Use of Information Collection:* NIDDK is conducting a survey to assess the efficiency and effectiveness of services provided by NIDDK's three clearinghouses: The National Diabetes Information Clearinghouse (NDIC); the National Digestive Diseases Information Clearinghouse (NDDIC); and the National Kidney and Urologic Diseases Information Clearinghouse (NKUDIC). The survey responds to Executive Order 12821, "Setting Customer Service Standards," which requires agencies and departments to identify and survey their "customers to determine the kind and quality of service they want and their level of satisfaction with existing services." *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; business and for profit organizations; not-for-profit agencies.

Type of Respondents: Physicians, health care professionals, patients, family and friends of patients.

The annual reporting burden is as follows: Estimated number of respondents: 7,079; *estimated number of responses per respondent:* 1; *estimated average burden hours per response:* 0.025; and *estimated total annual burden hours requested:* 177. The annualized cost to respondents is estimated at $3,793.00. There are no capital costs to report. There are no operating or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the

proposed project or to obtain a copy of the data collection reports and instrument, contact Kathy Kranzfelder, Director, NIDDK Office of Communications and Public Liaison, Building 31, Room 9A06, MSC2560, Bethesda, MD 20852 or e-mail your request, including your address to: *KranzfelderK@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: July 6, 2010.

Lynell Nelson, NIDDK,

Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–17581 Filed 7–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0343]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 14 on Bacterial Endotoxins Test General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 14: Bacterial Endotoxins Test General Chapter." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Bacterial Endotoxins Test General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the 14th annex to the core guidance on the Q4B process entitled "Q4B Evaluation and Recommendation of Pharmaceutical Texts for Use in the ICH Regions" (the core ICH Q4B guidance).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 14, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2010, the ICH Steering Committee agreed that a draft guidance entitled "Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 14: Bacterial Endotoxins Test General Chapter" should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Bacterial Endotoxins Test General Chapter harmonization proposal originating from the three-party PDG. This draft

guidance is in the form of an annex to the core ICH Q4B guidance made available in the **Federal Register** of February 21, 2008 (73 FR 9575). Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: July 9, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–17485 Filed 7–16–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, July 16, 2010, 10 a.m. to July 16, 2010, 12 p.m., National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on June 28, 2010, 75 FR 36662.

The date of the meeting has been changed from July 16, 2010 to August 9, 2010. The meeting is closed to the public.

Dated: *July 12, 2010.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17567 Filed 7–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Surveillance, Natural History, Quality of Care and Outcomes of Diabetes Mellitus With Onset in Childhood and Adolescence, RFA DP 10–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–2:30 p.m., August 3, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Surveillance, Natural History, Quality of Care and Outcomes of Diabetes Mellitus with Onset in Childhood and Adolescence, RFA DP 10–001."

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 13, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–17562 Filed 7–16–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, the Department of Health and Human Services is hereby giving notice that the Advisory Commission on Childhood Vaccines (ACCV) will hold a special meeting, to be held by teleconference. This meeting will be equivalent to an in-person meeting and will be open to the public.

Date and Time: The ACCV will meet on Thursday, July 29 from 1 p.m. to 2 p.m. (ET). The public can join the meeting via audio conference call by dialing 1–888–606–5950 on July 29 at 1 pm and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: This is a special meeting of the ACCV. Discussions will surround the draft interim influenza vaccine information materials developed by the Centers for Disease Control and Prevention (CDC) for distribution during the 2010–2011 season by health care providers in the United States to all seasonal influenza vaccine recipients (or to parents or legal representatives in certain cases). For this special meeting, members of the public are invited to attend by teleconference via a toll-free call-in phone number.

SUPPLEMENTARY INFORMATION: Section 2126 of the Public Health Service Act, as amended, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any person (or to parents or legal representatives in certain cases) receiving vaccines covered under the VICP.

Development and revision of vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the CDC. Section 2126 requires that the

materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the ACCV, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

Instructions for use of the vaccine information materials and copies of the materials can be found on the CDC Web site at: *http://www.cdc.gov/vaccines/pubs/VIS/.* In addition, single camera-ready copies may be available from State health departments.

The meeting described in this notice fulfills the legal requirements that the ACCV be consulted concerning the development or revision of vaccine information materials with respect to vaccines covered under the National Vaccine Injury Compensation Program.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, e-mail address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by e-mail, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

This meeting notice is being published less than the normally required 15-day timeframe due to the public health urgency of this agency business and in order to assure that completed vaccine information materials will be available for distribution prior to the beginning of vaccination for the upcoming influenza season (41 CFR 102–3.150(b)).

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *aherzog@hrsa.gov.*

Dated: July 12, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–17437 Filed 7–14–10; 4:15 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Human Therapeutics for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is a notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in US Patent Application 61/241,620 entitled "Development of an Immunotoxin in Which All B–Cell Epitopes Have Been Removed and Which Has High Cytotoxic Activity" [HHS Ref. E–269–2009/0–US–01], US Patent Application 60/969,929 entitled "Deletions in Domain II of Pseudomonas Exotoxin A That Reduce Non-Specific Toxicity" [HHS Ref. E–292–2007/0–US–01], US Patent Application 60/703,798 entitled "Mutated Pseudomonas Exotoxins with Reduced Antigenicity" [HHS Ref. E–262–2005/0–US–01], and all continuing applications and foreign counterparts, to MedImmune, LLC. This license may also include non-exclusive rights to US Patent Application 60/525,371 entitled "Mutated Anti-CD22 Antibodies and Immunoconjugates" [HHS Ref. E–046–2004/0–US–01], US Patent Application 60/325,360 entitled "Mutated Anti-CD22 Antibodies with Increased Affinity to CD22 Expressing Leukemia Cells" [HHS Ref. E–129–2001/0–US–01], US Patent Application 60/041,437 entitled "Recombinant Immunotoxins Targeted to CD22 Bearing Cells and Tumors" [HHS Ref. E–059–1997/0–US–01], US Patent 5,747,654 entitled "Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity" [HHS Ref. E–163–1993/0–US–01], PCT application PCT/US96/16327 entitled "Immunotoxin Containing A Disulfide-Stabilized Antibody Fragment" [HHS Ref. E–163–1993/2–PCT–01], and all continuing applications and foreign counterparts. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

The use of the HA22–LR, HA22–6X, HA22–8X, HA22–LR/6X and HA22–LR/8X immunotoxins for the treatment of CD22-expressing hematological malignancies.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 3, 2010 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *lambertsond@od.nih.gov.*

SUPPLEMENTARY INFORMATION: These inventions concern immunotoxins and methods of using the immunotoxins for the treatment of hematological malignancies such as hairy cell leukemia (HCL), chronic lymphocytic leukemia (CLL), acute lymphocytic leukemia (ALL) and non-Hodgkin's lymphoma (NHL). Several specific immunotoxins are covered by this technology, including HA22–LR, HA22–6X, HA22–8X, HA22–LR/6X and HA22–LR/8X.

Each of these immunotoxins comprises (1) a toxin moiety that is a modified version of the *Pseudomonas* exotoxin A ("PE") and (2) an antibody fragment domain that is capable of binding to the CD22 cell surface receptor. The PE moieties have been modified in various manners in order reduce the immunogenicity of the molecule. The modifications improve the therapeutic value of PE while maintaining its ability to trigger cell death. Since CD22 is preferentially expressed on several types of hematological cancer cells, the anti-CD22 antibody binding fragment allows the immunotoxins to be targeted

selectively to cancer cells so that only the cancer cells are killed. This results in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7 within fifteen (15) days from the date of this published notice.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 13, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–17579 Filed 7–16–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of the National Advisory Committee meeting.

SUMMARY: This notice announces the date, time, location, and agenda for the next meeting of the National Advisory Council (NAC). At the meeting, the subcommittees will report on their work since the February 10–11, 2010 meeting. This meeting will be open to the public.

DATES: *Meeting Dates:* Wednesday, August 4, 2010, from approximately 10 a.m. MST to 5:45 p.m. MST and Thursday, August 5, 2010, 8:30 a.m. MST to 3:30 p.m. MST. A public comment period will take place on the afternoon of August 5, 2010, between approximately 2:30 p.m. MST and 3 p.m. MST.

Comment Date: Persons wishing to make an oral presentation, or who are unable to attend or speak at the meeting, may submit written comments. Written comments or requests to make oral presentations must be received by July 26, 2010.

ADDRESSES: The meeting will be held at the Curtis Hotel, 1405 Curtis Street, Denver, CO 80202. Written comments and requests to make oral presentations at the meeting should be provided to the address listed in the **FOR FURTHER INFORMATION CONTACT** section and must be received by July 26, 2010. All submissions received must include the Docket ID FEMA–2007–0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on the Web site.

E-mail: FEMA–RULES@dhs.gov. Include Docket ID FEMA–2007–0008 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: Office of Chief Counsel, Federal Emergency Management Agency (Room 835), 500 C Street, SW., Washington, DC 20472–3100.

Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency (Room 835), 500 C Street, SW., Washington, DC 20472–3100.

Instructions: All submissions received must include the Docket ID FEMA–2007–0008. Comments received also will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read documents or comments received by the National Advisory Council, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency (Room 832), 500 C Street, SW., Washington, DC 20472–3100, telephone 202–646–3746, fax 202–646–3930, and e-mail *mailto: FEMA-NAC@dhs.gov*. The NAC Web site is located at: *http://www.fema.gov/about/nac/*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The National Advisory Council (NAC) will meet for the purpose of reviewing the progress and/or potential recommendations of the following NAC subcommittees: Preparedness and Protection, Response and Recovery, Public Engagement and Mission Support, and Federal Insurance and Mitigation. The Council may receive updates on response, recovery, preparedness, mitigation and Federal insurance issues, and on the Regional Advisory Councils.

Public Attendance: The meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. Persons with disabilities who require special assistance should advise the Designated Federal Officer of their anticipated special needs as early as possible. Members of the public who wish to make comments on Thursday, August 5, 2010 between 2:30 p.m. MST and 3 p.m. MST are requested to register in advance, and if the meeting is running ahead of schedule the public comment period may take place as early as 11 a.m. MST; therefore, all speakers must be present and seated by 10:45 a.m. MST. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above. In certain weather circumstances, a teleconference line for members of the public to call in may be set up.

Dated: July 13, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17506 Filed 7–16–10; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–68]

Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Data are collected on a sample of households receiving HUD housing assistance subsidies. These households are interviewed and their incomes verified to determine if subsidies are correctly calculated. The study identifies the costs and types of errors. The results are used to target corrective actions and measure the impact of past corrective actions.

DATES: *Comments Due Date:* August 18, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0203) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–0203.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Data are collected on a sample of households receiving HUD housing assistance subsidies. These households are interviewed and their incomes verified to determine if subsidies are correctly calculated. The study identifies the costs and types of errors. The results are used to target corrective actions and measure the impact of past corrective actions.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,950	1		0.802		2,367

Total Estimated Burden Hours: 2,367.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *July 13, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17569 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–64]

Technical Processing Requirements for Multifamily Project Mortgage Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from mortgagees, mortgagors, contractors, and attorneys for the purpose of obtaining multifamily mortgage insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the ability to manage the development, construction, completion, and successful lease-up of the proposed property.

DATES: *Comments Due Date:* August 18, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Processing Requirements for Multifamily Project Mortgage Insurance.

OMB Approval Number: 2502–New.

Form Numbers: HUD–2415, HUD–2456, HUD–92466, HUD–2283, FHA–2455, FHA–1710, HUD–92433, HUD–92450, HUD–92443, FHA–2459 HUD–3305, HUD–3306, HUD–92403.1. HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*.

Description of the Need for the Information and its Proposed Use: This

information is collected from mortgagees, mortgagors, contractors, and attorneys for the purpose of obtaining multifamily mortgage insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the ability to manage the development, construction, completion, and successful lease-up of the proposed property.

Frequency of Submission: Other (describe) Required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	9,250	1		0.71		6,525

Total Estimated Burden Hours: 6,525.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17576 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–66]

Federal Labor Standards Questionnaire(s); Complaint Intake Form

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

DATES: *Comments Due Date:* August 18, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0018) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Federal Labor Standards Questionnaire(s); Complaint Intake Form.

OMB Approval Number: 2501–0018.

Form Numbers: HUD–4730, HUD–4730–E, HUD–4730–SP; HUD–4731.

HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Description of the Need for the Information and its Proposed Use: The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,500	1		0.5		1,250

Total Estimated Burden Hours: 1,250.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17573 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–63]

Disclosure of Adjustable Rate Mortgages (ARMs) Rates

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The terms of all ARMS insured by HUD–FHA are required to be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect any adjustment to the interest rate and monthly mortgage amount.

DATES: *Comments Due Date: August 18, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0322) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Disclosure of Adjustable Rate Mortgages (ARMs) Rates.

OMB Approval Number: 2502–0322.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The terms of all ARMS insured by HUD–FHA are required to be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect any adjustment to the interest rate and monthly mortgage amount.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12,670	12.731		0.0499		8,065

Total Estimated Burden Hours: 8,065.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17577 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–65]

Insured Healthcare Facilities 232 Loan Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information provided is the application for HUD/FHA multifamily mortgage insurance. The information from sponsors and general contractors, and submitted by a HUD-approved mortgagee, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation from operators/managers of health care facilities is also required as part of the application for firm commitment for mortgage insurance. Other information requested enables HUD to determine the suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgage; and several other factors which have a bearing on the economic soundness of the subject property.

DATES: *Comments Due Date:* August 18, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Insured Healthcare Facilities 232 Loan Application.

OMB Approval Number: 2502–New.

Form Numbers: HUD–92013–NHICF, HUD 92264–HCF, HUD–92264–T.

HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Description of the Need for the Information and its Proposed Use: Information provided is the application for HUD/FHA multifamily mortgage insurance. The information from sponsors and general contractors, and submitted by a HUD-approved mortgagee, is needed to determine project feasibility, mortgagor/contractor acceptability, and construction cost. Documentation from operators/managers of health care facilities is also required as part of the application for firm commitment for mortgage insurance. Other information requested enables HUD to determine the suitability of improvements; extent, quality, and duration of earning capacity; the value of real estate proposed or existing as security for a long-term mortgage; and several other factors which have a bearing on the economic soundness of the subject property.

Frequency of Submission: On occasion, Annually, Other (describe) Required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	610	1		87.557		53,410

Total Estimated Burden Hours: 53,410.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17574 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–67]

Semi-Annual Labor Standards Enforcement Report—Local Contracting Agencies (HUD Programs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by HUD to fulfill its reporting obligation under DOL regulations at 29 CFR Part 5, Section 5.7(b).

DATES: *Comments Due Date: August 18, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB approval Number (2501–0019) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Semi-annual Labor Standards Enforcement Report—Local Contracting Agencies (HUD Programs).

OMB Approval Number: 2501–0019.

Form Numbers: HUD–4710, HUD–4710–I. HUD forms can be obtained at: *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/forms.*

Description of the Need for the Information and Its Proposed Use: The information is used by HUD to fulfill its reporting obligation under DOL regulations at 29 CFR Part 5, Section 5.7(b).

Frequency of Submission: Semi-annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,500	2		2		18,000

Total Estimated Burden Hours: 18,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 13, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–17571 Filed 7–16–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved information collection Office of Management and Budget (OMB) #1024–0022.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before September 17, 2010.

ADDRESSES: Send comments to: Garry Oye, National Park Service, Department of the Interior 1201 Eye Street NW. (Room 1004), Washington DC 20005; fax: 202–371–6623 or by e-mail at *Garry_Oye@nps.*gov. All responses to this notice will be summarized and included in the request for the OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Garry Oye, National Park Service, Department of the Interior, Chief of Wilderness Stewardship Division by e-mail at *Garry_Oye@nps.gov* or by phone: 202–513–7090.

SUPPLEMENTARY INFORMATION:

Title: Backcountry Use Permit (36 CFR 1.5, 1.6, and 2.10).

Form: Backcountry Use Permit, 10–404A.

OMB Control Number: 1024–0022.

Expiration Date: 11/30/2010.

Type of Request: Extension of a currently approved collection of information.

Description of Need: In 1976, the NPS initiated a backcountry registration system in accordance with the regulations found at 36 CFR 1.5, 1.6 and 2.10. The objective of the use permit system is to provide users access to backcountry areas of national parks with continuing opportunities for solitude, while enhancing resource protection and providing a means of disseminating public safety messages regarding the backcountry travel.

NPS backcountry program managers, by designating access routes and overnight camping locations, can redistribute campers in response to user impact, high fire danger, flood or wind hazard, bear activity or other situations that may temporarily close a portion of the backcountry. The NPS may also use the permit system as a means of ensuring that each backcountry user receives up-to-date information on backcountry sanitation procedures, food storage, wildlife activity, trail conditions and weather projections so that concerns for visitor safety are met.

The Backcountry Use Permit is an extension of the NPS statutory authority responsibility to protect the park areas it administers and to manage the public use thereof (16 U.S.C. 1 and 3). NPS regulations codified in 36 CFR parts 1 through 7, 12 and 13 are designated to implement statutory mandates that provide for resource protection and pubic enjoyment. The Backcountry Use Permit is the primary form used to provide access into NPS backcountry areas including those areas that require a reservation to enter where use limits are imposed in accordance with other NPS regulations. Such permitting enhances the ability to the NPS to education users on potential hazards, search and rescue efforts, and resource protection.

Description of Respondents: Individuals wishing to use backcountry areas within national parks.

Estimated Average Number of Responses: 285,000 annually.

Frequency of Response: 1 per respondent.

Estimated Average Time Burden per Respondent: 5 minutes.

Estimated Total Annual Reporting Burden: 23,750 hours.

Comments are Invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 13, 2010.

Cartina Miller,

NPS, Information Collection Clearance Officer.

[FR Doc. 2010–17463 Filed 7–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N103; 50133–1265–GSMP–S3]

Great Swamp National Wildlife Refuge, Morris County, NJ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; announcement of public scoping and request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is gathering the information needed to prepare a comprehensive conservation plan (CCP) and associated environmental assessment (EA) for Great Swamp National Wildlife Refuge (NWR). We publish this notice in compliance with our policy of advising other agencies and the public of our intentions to conduct detailed planning on refuges and obtain suggestions and information about the scope of issues to consider in the planning process.

DATES: We will hold two public scoping open house meetings on July 28, 2010, at the Chatham Township meeting hall. The open houses will be held from 1 p.m. to 3:30 p.m. with a presentation by refuge staff at 1:30 p.m., and from 6 p.m. to 8:30 p.m. with a presentation at 6:30 p.m. The meetings will be announced through our Web site (*http://www.fws.gov/northeast/planning*) and a newsletter for our mailing list, and through personal contacts. See the Addresses section for information about where to submit your comments. To ensure our consideration of your written comments regarding the scope of the refuge management plan, you should submit them within 30 days of the publication of this notice.

ADDRESSES: Send your comments or requests for more information on the planning process by any of the following methods:

Electronic mail: northeastplanning@fws.gov. Include "Great Swamp NWR" in the subject line of the message.

Facsimile: Attention: Bill Perry, at 413–253–8468.

U.S. Mail: Bill Perry, Refuge Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

In Person Drop-off: You may drop off comments during regular business hours at the above address.

For additional questions about the planning process, you may contact Bill Perry via the above methods or 413–253–8688 (telephone).

FOR FURTHER INFORMATION CONTACT: To obtain more information on the refuge, contact William Koch, Refuge Manager, at Great Swamp NWR, 241 Pleasant Plains Road, Basking Ridge, NJ 07920; 973–425–1222 (telephone); or *fw5rw_gsnwr@fws.gov* (electronic mail); or go to *http://www.fws.gov/northeast/greatswamp/*.

SUPPLEMENTARY INFORMATION:

Introduction

This notice initiates the comprehensive conservation planning process for Great Swamp NWR, located in Basking Ridge, New Jersey.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires us to develop a CCP for each national wildlife refuge. The purpose of a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to providing broad management direction on conserving wildlife and habitat, the plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years.

We establish each refuge for specific purposes, and use those purposes to develop and prioritize its management goals, objectives, and public uses. The planning process is one way for us and for the public to evaluate those goals and objectives for the best possible conservation of important wildlife habitat, while providing opportunities for wildlife-dependent recreation compatible with those purposes and the mission of the NWRS.

We request your input on all issues, concerns, ideas, improvements, and suggestions for the future management of Great Swamp NWR. In addition to this opportunity to participate in the scoping for the project, you may submit additional comments during the planning process by writing to the refuge planner (see **ADDRESSES** above).

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations on NEPA (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for complying with them. All of the comments we receive on either our EAs or our environmental impact statements become part of the official public record. We will handle requests for those comments in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other policies and procedures of the Department of the Interior or the Service. When we receive such a request, we will provide comment letters with the names and addresses of the individuals who wrote them. However, to the extent permissible by law, we will not provide the telephone numbers of those individuals.

Great Swamp NWR

Great Swamp NWR currently includes 7,768 acres of marsh, swamp, grassland, shrubland, and forest habitats. The approved refuge acquisition boundary encompasses 9,090 acres in the Great Swamp Basin, located in Long Hill, Chatham, and Harding Townships, New Jersey. Great Swamp is situated within a 55-square-mile watershed comprised of portions of 10 municipalities in Morris and Somerset Counties. It is located in the headwaters of the Passaic River and is bordered on the west by the upper Passaic River. The Great Swamp receives drainage from 29.2 square miles of the watershed through the tributaries; Primrose, Great, Loantaka, and Black Brooks.

The 7,768-acre Great Swamp NWR was established in 1960, and includes 746 acres designated as a research natural area, and 3,660 acres federally designated as wilderness. In 1966, the refuge was designated as a registered National Natural Landmark. The refuge was established "* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" (Migratory Bird Conservation Act); for "* * * the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *" (Emergency Wetlands Resources Act of 1986); and is "* * * suitable for; (1) Incidental fish and wildlife-oriented recreational development; (2) the protection of natural resources; (3) the conservation of endangered species or threatened species * * *" (Refuge Recreation Act).

Great Swamp NWR acts as an island of wildlife habitat totally surrounded by suburban communities and encroaching urbanization. Great Swamp offers one of the last refuges for wildlife and wild habitats in northern New Jersey, and becomes increasingly important as surrounding natural areas are fragmented or developed. The refuge provides stopover habitat for waterfowl during spring and fall migrations, when peak numbers reach 10,000–15,000 birds, as well as foraging habitat for over 100 species of birds that breed on the refuge.

Maternity colonies of federally listed endangered Indiana bats are known to occur on the refuge. Reptile and amphibian species of conservation concern at Great Swamp NWR include the federally listed threatened bog turtle, State endangered blue-spotted salamander, State threatened wood turtle, spotted turtle, eastern box turtle, and Fowler's toad. Many State threatened and endangered bird species nest on the refuge, including the American bittern, bobolink, Cooper's hawk, Red-shouldered hawk, Barred owl, and Red-headed woodpecker. In total, over 600 plant, 224 bird, 38 mammal, 23 reptile, 38 fish, and 19 amphibian species have been identified and confirmed on the refuge.

The predominant public uses are wildlife observation and photography. There are 8.5 miles of walking trails and 1.5 miles of boardwalks, three observation blinds, and an auto tour route to facilitate those uses. Each November, hunters with permits may access portions of the refuge for a 4-day deer hunt, per State regulations.

Dated: June 4, 2010.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2010–17444 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Shoreline Restoration and Management Plan/ Environmental Impact Statement (EIS) for Indiana Dunes National Lakeshore, Indiana

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) is announcing its intent to prepare an environmental impact statement (EIS) for a Shoreline Restoration and Management Plan (SRMP) for Indiana Dunes National Lakeshore (Park), Indiana. The EIS will be approved by the Regional Director, Midwest Region.

The SRMP will prescribe the resource conditions and restoration activities that are to be achieved and maintained for the shoreline over the next 15 to 20 years. The SRMP will outline what must be achieved based on review of the Park's purpose, significance, special mandates, and the body of laws and policies that direct Park administration. Based on determinations of restoration endpoints necessary to achieve the NPS mission in context of the southern Lake Michigan Shoreline, the SRMP will outline the kinds of resource management and restoration activities that would be appropriate in the future. A range of reasonable management alternatives will be developed and the quantitative and science-based impacts will be assessed through this planning process and will include, at a minimum, no-action and the preferred alternative.

Major issues to be addressed in the SRMP include: Restoration or replication of natural shoreline sand movement; foredune/dune restoration and management; limiting or removing terrestrial and aquatic invasive species threats to the lakeshore; and improved water quality.

DATES: Any comments on the scope of issues to be addressed in the EIS can be received at any time after the publication of this notice in the FR. Public meetings regarding the EIS will be held during the scoping period. Specific dates, times, and locations will be made available in the local media; on the Park Web site (*http://www.nps.gov/indu*); on the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/indu*); or by contacting the Superintendent at the address and telephone number below.

ADDRESSES: Information on the planning process will be available from the Superintendent, Indiana Dunes National Lakeshore 1100 N. Mineral Springs Road, Porter, Indiana 46304, telephone 219–926–7561.

SUPPLEMENTARY INFORMATION: If you wish to comment on any issues associated with the EIS, you may submit your comments by any one of several methods. You may mail comments to the Park, or deliver them directly to the Park, at the address above. Finally, you may provide comments electronically by entering them into the PEPC Web site at the address above.

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 2, 2010.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 2010–17462 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–FH–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORWO957000–L62510000–PM000: HAG10–0314]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 3 S., R. 6 W., accepted May 7, 2010
T 2 S., R. 6 W., accepted May 7, 2010
T. 1 S., R. 5 W., accepted May 7, 2010
T. 26 S., R. 19 E., accepted May 10, 2010
T. 10 S., R. 2 E., accepted May 11, 2010

Washington

T. 39 N., R. 33 E., accepted May 4, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204.

Cathie Jensen,

Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–17442 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCM07RE4030]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, thirty (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Superintendent, Fort Peck Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs, and was necessary to determine boundaries of trust or tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 44 E.

The plat, in 3 sheets, representing the dependent resurvey of portions of the north boundary, the subdivisional lines, the subdivision of sections 1, 2, 3, and 10, the adjusted original meanders of the left bank of the Missouri River, downstream, through sections 2, 3, 10, and 15, and the adjusted 2006 meanders of the left bank of the Missouri River and the adjusted 2006 left bank of a relicted channel of the Missouri River, downstream, through sections 10 and 15, the subdivision of sections 1, 2, 3,

and 10, and the survey of the meanders of the present left bank of the Missouri River, downstream, through sections 2, 3, and 10, the left bank of a relicted channel of the Missouri River, downstream, through section 2, two medial lines of a relicted channel of the Missouri River, certain division of accretion lines and partition lines, two metes and bounds descriptions of a warranty deed, now designated as Parcel A and B, in section 2, and an attached island, now designated as Tract 37, Township 26 North, Range 44 East, of the Principal Meridian, Montana, was accepted July 2, 2010.

We will place a copy of the plat, in 3 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 3 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 3 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: July 12, 2010.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–17563 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC and Wisconsin Historical Society, Museum Division, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act, (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the possession of the Wisconsin Historical Society, (aka State Historical Society of Wisconsin), Museum Division, Madison, WI, that meet the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1928, human remains and funerary objects were removed from at least two mounds located within the boundaries of the Menominee Indian Tribe Reservation, Menominee County (formerly Shawano County), WI, by Arthur P. Kannenberg and John V. Satterlee. The exact location of these mounds is not known. In 1950, the Wisconsin Historical Society, Museum Division, obtained the human remains, associated funerary objects, and unassociated funerary objects from the wife of Arthur P. Kannenberg. The human remains and associated funerary objects are described in a companion Notice of Inventory Completion. The 91 unassociated funerary objects are 89 earrings and earring fragments, and 2 silver brooches.

The Menominee Indian Reservation falls within the ancestral and historic territory of the Menominee people. Archeological investigation has uncovered additional historic burials in this area. Additionally, archeological research shows that earrings and brooches, similar to the ones mentioned above, are commonly found within historic Indian burials throughout the Great Lakes region. Furthermore, Menominee oral history states that the origin of the Menominee people began at the mouth of the Menominee River, which is approximately 60 miles from the present-day Menominee Reservation.

Officials of the Bureau of Indian Affairs and Wisconsin Historical Society, Museum Division, have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 91 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Bureau of Indian Affairs and Wisconsin Historical Society, Museum Division, also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Menominee Indian Tribe of Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jennifer L. Kolb, Wisconsin Historical Museum, 30 N. Carroll St., Madison, WI 53703, telephone (608) 261–2461, before August 18, 2010. Repatriation of the unassociated funerary objects to the Menominee Indian Tribe of Wisconsin may proceed after that date if no additional claimants come forward.

The Wisconsin Historical Society, Museum Division, is responsible for notifying the Menominee Indian Tribe of Wisconsin that this notice has been published.

Dated: July 9, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17476 Filed 7–16–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Wisconsin Historical Society, Museum Division, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Wisconsin Historical Society (aka State Historical Society of Wisconsin), Museum Division, Madison, WI. The human remains were removed from the Pueblo of Zuni, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was done by Wisconsin Historical Society professional staff in consultation with the Zuni Tribe of the Zuni Reservation, New Mexico.

Sometime prior to 1892, human remains representing a minimum of one individual were excavated from a depth of several feet below the surface of the present-day Pueblo of Zuni, Catron County, NM, by the Hemenway expedition. The Hemenway Expedition 1886–1896, was directed by Frank Hamilton Cushing, then Director of the Department of Ethnology at the National Museum. Mary E. Harper donated the remains to the Wisconsin Historical

Society in 1892. No known individual was identified. No associated funerary objects are present.

Wisconsin Historical Society professional staff determined the human remains represent the physical remains of an individual of Native American ancestry. Based on geographical location, the Society reasonably believes the human remains are culturally affiliated to the Zuni Tribe.

Officials of the Wisconsin Historical Society, Museum Division have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Wisconsin Historical Society also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jennifer L. Kolb, Wisconsin Historical Museum, 30 N. Carroll St., Madison, WI 53703, telephone (608) 261–2461, before August 18, 2010. Repatriation of the human remains to the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Wisconsin Historical Society is responsible for notifying the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: July 9, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17484 Filed 7–16–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Museum of Anthropology, Washington State University Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of Native American human remains and associated funerary objects in the possession and control of the Museum of Anthropology, Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from an unknown site in central Washington State and Asotin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Museum of Anthropology, Washington State University, professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group.

In June and July of 1951, human remains representing a minimum of two individuals were removed from the Steptoe Burial site (45AS2), in Asotin County, WA. The burials were removed as part of an archeological study performed by the Department of Anthropology at Washington State University under the direction of Dr. Richard Daugherty. No known individuals were identified. The 57 associated funerary objects are 4 projectile points, 2 scrapers, 1 bone scraper handle, 1 lot of mussel shells, 1 lot of red ochre, 2 bone awls, 1 lot of charcoal, 1 pestle, 2 lots of cedar wood fragments, 3 lots of shell beads, 1 stone bead necklace, 2 bifaces, 5 lots of bag residue, 4 lots of animal bones, 1 stone net sinker, 1 lot of tin can fragments, 2 fragments of flatware, 1 lot of buttons, 6 lots of fabric fragments, 3 lots of nails, 2 lots of metal fragments, 3 lots of glass beads, 3 lots of modified wood fragments, and 5 lots of leather fragments.

The burial pattern recorded by the excavators and the character of the extant funerary items indicate that these remains are Native American and that they date to the Late Prehistoric Period on the southern Plateau. The site is in the vicinity of several ethnographically known communities whom anthropologists have characterized as ancestral to the Nez Perce. The Nez Perce are members of the Federally-recognized Nez Perce Tribe, Idaho, and 1 of the 12 bands of the Confederated Tribes of the Colville Reservation. The site is also within the overlapping 19th century territories of the Nez Perce and Palus (Sprague 1998; Walker 1998). Descendents of these communities are known to be members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group.

In 2001, a small jar of fragmentary human remains representing a minimum of two individuals was found in the museum storage facility, but the remains were likely removed from Columbia Point, Asotin County, WA. The jar was labeled "Columbia Point 80–24." Also contained in the jar was one lot of soil from which the bones were removed. Between 1977 and 1979, archeological studies were performed at Columbia Point by the Mid-Columbia Archaeological Society. The site had been heavily disturbed by looting. The number 80–24 is reminiscent of a collection numbering system used by the Museum of Anthropology between the 1950s and 1980s. The first part of the number represents the last two digits of the year the materials were collected and the numbers after the dash represent the order in which the collections were recorded during that year. This contextual information strongly suggests that the remains are Native American. No known individuals were identified. The associated funerary object is a soil sample.

Columbia Point has been determined eligible for listing on the National Register of Historic Places as a traditional cultural property. Columbia Point is located at the mouth of the Yakima River, which is upstream and across the Columbia River from the confluence of the Snake and Columbia Rivers. Ethnographic and historic records describe the area as a major traditional gathering place for fishing and trading. This area is located within the overlapping aboriginal territory of the Nez Perce, Palouse, Walla Walla, Wanapum, and Yakama. According to the "Indian Land Areas Judicially Established by the Indian Court of Claims 1978" at Index 96, as well as early and more recent ethnographic documentation, this area is within the aboriginal territory of the Walla Walla. Furthermore, early ethnographic evidence indicates that the Palouse, Wanapum, and Yakama also occupied this area. Descendants of the Palouse,

Walla Walla, Wanapum, and Yakama are members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group.

In 2009, a detailed assessment was made of a complete skeleton of a juvenile that is cemented in the sediment in which it was originally buried. Retired faculty and former students were contacted and they recall that the skeleton was formerly in the lab of the late Dr. Grover Krantz. Dr. Krantz had described the skeleton as coming from an archeological site along the Columbia River in central Washington State. The character of the cemented sediment supports that the skeleton was buried in sandy river deposits. No known individual was identified. The associated funerary object is a necklace of dentalia shell.

The association of these remains with an unknown archeological site, the semi-flexed position of the skeletal remains, and the presence of dentalia shell, which was a common funerary item during the Late Prehistoric Period on the southern Plateau, provide strong evidence that the remains are Native American. The identification of a general regional provenience for the human remains supports a cultural affiliation with any or all of those communities whose traditional territories included the Mid-Columbia region. These communities include the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group.

Officials of the Museum of Anthropology, Washington State University, have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Museum of Anthropology, Washington State University, also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 59 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Anthropology, Washington State University, have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, WSU Museum of Anthropology, PO Box 644910, Pullman, WA 99164, telephone (509) 335–4314, before August 16, 2010. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The Museum of Anthropology is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group, this notice has been published.

Dated: July 9, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17483 Filed 7–16–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Georgia Department of Transportation, Atlanta, GA; University of West Georgia, Carrollton, GA; and University of Georgia, Athens, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Georgia Department of Transportation, Atlanta, GA, and in the possession of the University of West Georgia, Carrollton, GA, and the University of Georgia, Athens, GA. The human remains were removed from Richmond County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Georgia Department of Transportation professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Catawba Indian Nation (aka Catawba Tribe of South Carolina); Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

From November 1980 to January 1981, and during the summer of 1991, the Lover's Lane Site (9RI86), near the Savannah River, Richmond County, GA,

was excavated under Georgia Department of Transportation contracts, RR–0001(001) and F–117–1(11), as part of the construction of the Bobby Jones Expressway in Augusta, GA. The earlier excavations recovered associated funerary objects from two possible cremations, although the human remains were not removed and are not found in the collection. These funerary objects are in the possession of the University of Georgia. In 1991, human remains representing a minimum of two individuals and associated funerary objects were removed, and are in possession of the University of West Georgia. No known individuals were identified. The 30 associated funerary objects are 4 quartz debitage, 13 chert debitage, 3 metavolcanic debitage, 8 fiber/sand/grit tempered sherds, 1 chert projectile point, and 1 raw material.

The human remains from the Lover's Lane Site (9RI86) are believed to be associated with the Late Archaic based on the analysis of the associated funerary objects. The associated funerary objects include recognized Late Archaic ceramics and projectile points. In addition, cremations are a recognized Archaic burial practice in the Tennessee River Valley, but otherwise unknown in the Southeast. In the Northeast, however, Late Archaic cremations are slightly more common and date to roughly 4200–2985 B.P. or 2250–1035 B.C. Given this evidence, the human remains are likely prehistoric Native American.

Officials of the Georgia Department of Transportation have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Georgia Department of Transportation also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 30 associated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Georgia Department of Transportation have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In July 2009, the Georgia Department of Transportation requested that the Review Committee recommend the disposition of the culturally unidentifiable Native American human remains and associated funerary objects to the United Keetoowah Band of Cherokee Indians in Oklahoma, as the human remains were found within the tribe's aboriginal and historical territory. The Review Committee considered the proposal at its October 30–31, 2009, meeting and recommended disposition of the culturally unidentifiable Native American human remains and associated funerary objects to the United Keetoowah Band of Cherokee Indians in Oklahoma.

The Secretary of the Interior agreed with the Review Committee's recommendation. A March 4, 2010, letter from the Designated Federal Official, writing on behalf of the Secretary of the Interior, transmitted the authorization for the Georgia Department of Transportation to effect disposition of the physical remains of the culturally unidentifiable human remains to the United Keetoowah Band of Cherokee Indians in Oklahoma contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement. In the same letter, the Secretary recommended the transfer of the associated funerary objects to the Indian tribe listed above to the extent allowed by Federal, state, or local law.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Eric Anthony Duff, Cultural Resources Section Chief, Georgia Department of Transportation, Office of Environmental Services–16th Floor, One Georgia Center, 600 West Peachtree St. NW, Atlanta, GA 30308, telephone (404) 631–1071, before August 18, 2010. Disposition of the human remains and associated funerary objects to the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The Georgia Department of Transportation is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Catawba Indian Nation; Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); Shawnee Tribe, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: July 9, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17481 Filed 7–16–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Wisconsin Historical Society, Museum Division, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Wisconsin Historical Society, (aka State Historical Society of Wisconsin), Museum Division, Madison, WI. The human remains were removed from Furnas County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Pawnee Nation of Oklahoma.

At an unknown date, human remains representing a minimum of one individual were removed from a grave near Cambridge, Furnas County, NE. In 1911, the skull was donated to the Wisconsin Historical Society. No known individual was identified. No associated funerary objects are present.

Analysis performed by staff at the Wisconsin Historical Society determined that the remains represent one individual of Native American ancestry. According to historical records, the Pawnee traditionally inhabited the central-eastern region of

Nebraska until their removal to their present-day reservation in Oklahoma in 1875. The Kitkahahki or Republican band of the Pawnee lived in villages along the Republican River. Cambridge, NE, is also located along the Republican River. Historical records also suggest that the Pawnee inhabited this region to the exclusion of other tribes.

Officials of the Wisconsin Historical Society, Museum Division, have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Wisconsin Historical Society, Museum Division, also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pawnee Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jennifer L. Kolb, Wisconsin Historical Museum, 30 N. Carroll St., Madison, WI 53703, telephone (608) 261–2461, before August 18, 2010. Repatriation of the human remains to the Pawnee Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Wisconsin Historical Society, Museum Division, is responsible for notifying the Pawnee Nation of Oklahoma that this notice has been published.

Dated: July 9, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17475 Filed 7–16–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 162499]

Public Land Order No. 7744; Withdrawal of National Forest System Land for Inyan Kara Area; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,278.09 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years on behalf of the United States Forest Service to protect the Inyan Kara area of the Black Hills National Forest in Crook County, Wyoming. The land has been and will remain open to mineral leasing and to all other forms of disposition which may by law be made of National Forest System land.

DATES: *Effective Date:* July 19, 2010.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6257.

SUPPLEMENTARY INFORMATION: The United States Forest Service will manage the land to protect and preserve the significant historic and prehistoric Native American cultural and archeological sites known as the Inyan Kara area within the Black Hills National Forest. The land will also be managed for its unusual scenic and geological characteristics.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2, but not from the mineral leasing laws or other forms of disposition which may by law be made of National Forest System land, to protect the Inyan Kara area of the Black Hills National Forest:

Sixth Principal Meridian

T. 49 N., R. 62 W.,
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 30, lots 1 and 2, N½NE¼, and E½NW¼.
T. 49 N., R. 63 W.,
Sec. 24, E½E½;
Sec. 25, NE¼ and N½SE¼.

The area described contains 1,278.09 acres, more or less, in Crook County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land other than the mining laws (30 U.S.C. Ch. 2).

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 30, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–17528 Filed 7–16–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N021; 40120–1113–IBWP–C2]

Recovery Plan for the Ivory-billed Woodpecker (Campephilus principalis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Final Recovery Plan for the Ivory-billed Woodpecker (*Campephilus principalis*). This final recovery plan includes criteria and measures that should be taken in order to begin to effectively recover the species to the point where delisting is warranted under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: Copies of the draft recovery plan are available by request from the Lafayette Field Office of the U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, LA 70506, or by download from our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Deborah Fuller, at the above address or telephone (337) 291–3100.

SUPPLEMENTARY INFORMATION: Restoring listed animals and plants to the point where they are again secure, self-sustaining components of their ecosystems is a primary goal of our threatened and endangered species program. To help guide the recovery effort, we prepare recovery plans for listed species native to the United States, pursuant to section 4(f) of the Act (16 U.S.C. 1531 *et seq.*), unless such a plan would not promote the conservation of a particular species. Recovery plans describe actions that may be necessary for conservation of the species, establish criteria for reclassification from endangered to threatened status or removal from the list of threatened and endangered species, and estimate the time and cost for implementing the needed recovery measures.

Prior to European settlement, the ivory-billed woodpecker appeared to be

widely distributed throughout the southeastern United States. Since then the species has become extremely rare and was, until recently, commonly accepted as extirpated from its known range in the United States. The ivory-billed woodpecker's disappearance is closely linked with logging and clearing of the contiguous forest habitats which once covered much of the southeastern United States. Additionally, as habitats became fragmented and access to the birds increased, collecting and other direct mortality may have had a significant impact.

Despite this species' having been listed since 1967, no recovery plan was prepared, in large part due to the lack of any clear, undisputed evidence (since 1944) of the species' continued existence. However, evidence supporting the presence of at least one bird in the Bayou de View area of Cache River National Wildlife Refuge in 2004, as well as additional supporting information, generated the need to complete a recovery plan. Given the limited information on the current number of individuals throughout the species' range and the limited knowledge on biology, habitat requirements, and genetic information, we recognize the need to generate scientific information to better address the threats and limiting factors to this species and to develop additional specific recovery criteria.

The recovery strategy initially focuses on learning more about the species' status and ecology, including documenting known locations and characterizing these habitats. Population goals are not identified, but are acknowledged as key to recovery. Initial efforts include development of models and additional research that will generate these spatially explicit population goals. Neither an appropriate time to recovery nor cost estimate are meaningful at this time, due to the difficulty in reliably locating individual birds or their roosting or nesting cavities.

Recovery Objectives

This recovery plan identifies many interim actions needed to achieve long-term viability for the ivory-billed woodpecker and to accomplish these goals. Recovery of the ivory-billed woodpecker focuses on the following objectives:

1. Identify and delineate any existing populations.

2. Identify and reduce risks to any existing population.

3. Protect and enhance suitable habitat once populations are identified.

4. Reduce or eliminate threats sufficient to allow successful restoration of multiple populations when those populations are identified.

The emphasis for recovery will be on the distribution of additional viable populations in the historic range of the species. Discovery, documentation, and subsequent management of additional populations must meet scientifically accepted goals for the promotion of viable populations of listed species.

At present, the limited knowledge on the population abundance, distribution, habitat requirements, and biology of the ivory-billed woodpecker prevents development of more specific recovery criteria. The following interim criteria will lead us to the development of more specific, quantifiable criteria that should be met before we consider the delisting of this species:

1. Survey potential habitats for any occurrences of the species.

2. Determine current habitat use and needs of any existing populations.

3. Conserve and enhance habitat on public land where ivory-billed woodpeckers are located. Acquire additional acreage, if needed, from willing sellers and list in the public habitat inventory.

4. Conserve and enhance habitat on private lands through the use of voluntary agreements (*e.g.,* conservation easements, habitat conservation plans) and public outreach.

5. Analyze viability of any existing populations (numbers, breeding success, population genetics, and ecology).

6. Determine the number and geographic distribution of subpopulations needed to create conditions favorable to a self-sustaining metapopulation and to evaluate habitat suitable for species re-introduction.

The draft recovery plan was completed and released for public comment on August 22, 2007 (72 FR 47064). We solicited review and comment from local, State, and Federal agencies and the public on the draft recovery plan. We considered all comments we received during the comment period, peer review comments, and additional recovery team comments prior to the decision to approve of the revised recovery plan. Responses to these comments are found in Appendix K of the recovery plan. We welcome continuing public comment on this recovery plan, and we will consider all substantive comments on an ongoing basis to inform the implementation of recovery activities and future updates to the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 15, 2010.

Jeffrey M. Fleming,

Acting Regional Director, Southeast Region.

Editorial Note: This document was received in the Office of the Federal Register on July 14, 2010.

[FR Doc. 2010–17486 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Education

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice of Request for Nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, and the Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) the Bureau of Indian Education requests nominations of individuals to serve on the Advisory Board for Exceptional Education (Advisory Board). There are eight positions available. The Bureau of Indian Education (BIE) will consider nominations received in response to this Request for Nominations, as well as other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides Advisory Board and membership criteria.

DATES: Nominations must be received on or before August 18, 2010.

ADDRESSES: Please submit nomination information to Sue Bement, Designated Federal Official (DFO), Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103–1088.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Education Specialist, telephone (505) 563–5274.

SUPPLEMENTARY INFORMATION: The Advisory Board was established in accordance with the Federal Advisory Committee Act, Public Law 92–463. The following provides information about the Advisory Board, the membership and the nomination process.

Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice and recommendations with respect to special education and related services for children with disabilities in Bureau-funded schools in accordance with the requirements of IDEA of 2004.

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and with other local, State and Federal agencies;

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities;

(3) Serve as advocates for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming;

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under 20 U.S.C. 1411(h)(2)(D);

(5) Provide advice and recommend policies concerning effective inter/intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter/intra-agency programs and activities; and

(6) Report and direct all correspondence to the Assistant Secretary-Indian Affairs through the Director, BIE with a courtesy copy to the DFO.

Membership

(a) As required by 20 U.S.C. 1411(h)(6), the Advisory Board shall be composed of 15 individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one (1) Member representing each of the following interests: Indians with disabilities; teachers of children with disabilities; Indian parents or guardians of children with disabilities; service providers; State Education Officials; Local Education Officials; State Interagency Coordinating Councils (for States having Indian reservations); tribal representatives or tribal organization representatives; and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary-Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other board members will be appointed by the Secretary of the Interior. Advisory Board members shall serve staggered terms of 2 or 3 years from the date of their appointment.

Miscellaneous

(a) Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the DFO. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Advisory Board meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary-Indian Affairs or DFO.

(d) All Advisory Board meetings are open to the public in accordance with the Federal Advisory Committee Act regulations.

Nomination Information

(a) Nominations are requested from individuals, organizations, and federally recognized tribes, as well as from State Directors of Special Education (within the 23 states in which Bureau-funded schools are located) concerned with the education of Indian children with disabilities as described above.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the BIE regarding the needs of American Indian children with disabilities.

(c) A résumé or curriculum vitae summarizing the candidate's qualifications must be included with the nomination application. Nominees must have the ability to attend Advisory Board meetings, carry out Advisory Board assignments, participate in teleconferences, and work in groups.

(d) The Department of the Interior is committed to equal opportunity in the workplace and seeks diverse Advisory Board membership, which is bound by the Indian Preference Act of 1990 (25 U.S.C. 472).

Nomination Contents

If you wish to nominate someone for appointment to the Advisory Board, pleases do not make the nomination until the person has been contacted and agreed to have his/her name submitted to BIE for this purpose. BIE is interested in the following in its review of nominations:

- The nominee's contact information, including full name, mailing address, city, state, zip code, primary and secondary contact phone numbers, place of employment, work street address, city, state and zip code, employment title, work telefax number and email address;
- Which of the following categories the person will represent (one or more): Indian persons with disabilities; teachers of children with disabilities; Indian parents or guardians of children with disabilities; service providers; State education officials; local education officials; State interagency coordinating councils (for States having Indian reservations); tribal representatives or tribal organization representatives; Bureau employees concerned with the education of children with disabilities;
- Whether the nominee is recommended for the role of Advisory Board Chairperson or Advisory Board Member;
- Which of the following describes nominee's experience with Bureau-funded schools (one or more): BIE day school, BIE boarding school, off-reservation boarding school, tribal contract school, tribal grant school, cooperative school;
- Information highlighting experiences related to the education of Indian infants, toddlers, children and youths with disabilities, including time frames of experience or employment, position titles, location of employment or organization involvement and a brief description of duties;
- A list of membership or affiliations with professional education organizations, particularly special education organizations, and organization offices held, if applicable;
- Special interests, activities, awards (professional, educational and community) related to the education of disabled Indian children (infants, toddlers, children and/or youths); and
- The name and contact information (street address, city, state, zip code, telephone number and telefax number) of the Indian tribe, organization, individual (include position title) making the nomination, including the signature of the authorizing official and date of signature.

Dated: June 25, 2010.

Larry Echo Hawk,

Assistant Secretary-Indian Affairs.

[FR Doc. 2010–17544 Filed 7–16–10; 8:45 am]

BILLING CODE 4310–6W–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–465 and 731–TA–1161 (Final)]

Certain Steel Grating From China

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(B) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of certain steel grating from China, provided for in subheading 7308.90.70 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized and sold in the United States at less than fair value.[2]

Background

These investigations were instituted in response to a petition filed on May 29, 2009, by Alabama Metal Industries, Birmingham, AL and Fisher & Ludlow, Wexford, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain steel gratings from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 25, 2010 (75 FR 8746). The hearing was held in Washington, DC, on May 25, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 13, 2010. The views of the Commission are contained in USITC Publication 4168 (July 2010), entitled *Certain Steel Grating from China: Investigation Nos. 701–TA–465 and 731–TA–1161* (*Final*).

By order of the Commission.

Issued: July 14, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17498 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–728]

In the Matter of Certain Collaborative System Products and Components Thereof (II); Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 15, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of eInstruction Corporation of Denton, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collaborative system products and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,930,673. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 12, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain collaborative system products or components thereof that infringe one or more of claims 1–24 of U.S. Patent No. 6,930,673, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

eInstruction Corporation, 308 N. Carroll Boulevard, Denton, Texas 76201.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Promethean Inc., 1165 Sanctuary Parkway, Suite 400, Alpharetta, Georgia 30009.

Promethean Technology Shenzhen Ltd., Room 2756, 27/F, K. Wah Center, No. 1010 Huaihai Zhong Road, Xuhui District, Shanghai, China.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17468 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–727]

In the Matter of Certain Underground Cable and Pipe Locators; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 10, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Radiodetection, Ltd. of the United Kingdom. A letter supplementing the complaint was filed on June 29, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain underground cable and pipe locators by reason of infringement of certain claims of U.S. Patent No. 6,268,731. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3052.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 12, 2010, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain underground cable and pipe locators that infringe one or more of claims 1, 2, 6, and 7 of U.S. Patent No. 6,268,731, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Radiodetection, Ltd., Western Drive, Bristol BS14 0AF, United Kingdom.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Vivax-Metrotech Corp., 3251 Olcott St., Santa Clara, CA 95054.

SebaKMT, Dr.-Herbert-Iann-Str. 6, 96148 Baunach, Germany.

Leidi Utility Supply Ltd., Rm. 405 3rd Building No. 641 Tianshan Rd., Shanghai 200336, China.

(c) The Commission investigative attorney, party to this investigation, is Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: July 12, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17469 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–8]

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Change in date for transmitting final recommendations to the President.

SUMMARY: The Commission has changed the date on which it intends to report its final recommendations to the President in this matter from July 12, 2010, to August 9, 2010, to allow more time to consider the views submitted by Federal agencies and other interested parities.

DATES: August 9, 2010—Transmittal of final recommendations to the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Nomenclature Analyst (*donnette.rimmer@usitc.gov,* 202–205–3031) or Janis L. Summers, Attorney-Advisor (*janis.summers@usitc.gov,* 202–205–2605). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Notice of institution of the investigation and opportunity to comment on proposed recommendations was published in the **Federal Register** on April 13, 2010 (75 FR 18882). The period for filing written submissions closed on June 25, 2010.

By order of the Commission.

Issued: July 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17467 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–669]

In the Matter of Certain Optoelectronic Devices, Components Thereof, and Products Containing the Same Issuance of a Limited Exclusion Order and Cease and Desist Order; and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a limited exclusion order and cease and desist order directed against respondent Emcore Corporation ("Emcore") of Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 10, 2009 based on a complaint filed on February 3, 2009, by Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore; Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore; and Avago Technologies Ltd. of San Jose, California (collectively, "Avago"). 74 FR 10278–79 (March 10, 2009). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain optoelectronic devices, components thereof, or products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 5,359,447 ("the '447 patent") and 5,761,229 ("the '229 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint names a single respondent, Emcore Corporation ("Emcore") of Albuquerque, New Mexico.

On December 7, 2009, the Commission issued notice of its determination not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting Avago's motion for summary determination on ownership of the asserted patents.

On March 12, 2010, the ALJ issued his final ID finding a violation of section 337 by Emcore by reason of infringement of one or more of claims 1, 2, 3, and 5 of the '447 patent. The ALJ found no violation of section 337 with respect to the '229 patent. He also issued his recommendation on remedy and bonding during the period of Presidential review. On March 29, 2010, Emcore filed a petition for review of the final ID. The Commission investigative attorney ("IA") and Avago filed responses to the petition on April 6, 2010. On May 13, 2010, the Commission issued notice of its determination not to review the ALJ's final ID finding a violation of section 337, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 75 FR 28060–61 (May 19, 2010).

On May 24 and June 1, 2010, respectively, complainant Avago, respondent Emcore, and the IA filed briefs and reply briefs on the issues for which the Commission requested written submissions.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) A limited exclusion order prohibiting the unlicensed entry of optoelectronic devices, components thereof, and products containing the same that are covered by one or more of claims 1, 2, 3 and 5 of the '447 patent, where the infringing optoelectronic devices, components thereof, and products containing the same are manufactured

abroad by or on behalf of, or are imported by or on behalf of, Emcore, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns; and (2) a cease and desist order prohibiting Emcore from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, optoelectronic devices, components thereof, and products containing the same that are covered by one or more of claims 1, 2, 3, and 5 of the '447 patent.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission determined that a three (3) percent bond of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. *1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

By order of the Commission.

Issued: July 12, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17471 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Guidebook for Building High Performance Correctional Organizations

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for an eight-month period to begin in September 2010. Work under this agreement will continue NIC's High Performance Correctional Organizations Project that has been developed over the past four years. This project will consolidate the work into a guidebook to be placed in the public domain for use by correctional administrators.

The project funded under this cooperative agreement will continue and extend the work of Building High Performance Correctional Organizations (BHPCO) and other NIC projects.

Intended outcome: The intended outcome for this project will include creating a guidebook for jails, community corrections and prisons; developing ways to address agency inefficiencies that result from the lack of a holistic and integrated perspective; establishing a core set of values or guiding principles that agencies can apply to correctional disciplines to enhance business practices; improving organizational performance by assessing strengths, weaknesses, opportunities, resources and threats; prioritizing goals and objectives; and containing costs associated with operating correctional agencies and systems.

DATES: Applications must be received by 4 p.m. (EDT) on Monday, August 2, 2010. Selection of the successful applicant and notification of review results will be announced to all applicants by September 30, 2010.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307–3106, extension 0 for pickup. Faxed or e-mailed applications will not be accepted. Electronic applications can be submitted only via *http://www.grants.gov*.

FOR FURTHER INFORMATION: A copy of this announcement and the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.*

All technical questions concerning this announcement should be directed to Pamela Davison. She can be reached by calling 1–800–995–6423 ext 0484 or by e-mail at *pdavison@bop.gov.* All programmatic questions concerning this announcement should be directed to Sherry Carroll. She can be reached by calling 1–800–995–6423 ext 0378 or by e-mail at *scarroll@bop.gov.*

SUPPLEMENTARY INFORMATION:

Project Goals: The BHPCO Guidebook is a compendium of advice and best practice guidance that inform higher performance in correctional institutions. Its intended audience includes managers, executives, supervisors, and staff personnel vested in success and continuous improvement, contributing to a just and humane society through their work in safe, functional, correctional facilities. At a minimum, the Guidebook—a series of stand-alone issuances that can be compiled as chapters in a larger volume—provides credible, easily accessible reference material in a variety of areas in which correctional administrators are most vulnerable, where desired and current state gaps are at their widest, and where system-wide competency needs are defined. Because the variety of institutions is broad and the complexity of the myriad systems influencing performance is unique to individual cases, material presented in the guide cannot be expected to satisfy all end-state situational solutions. Instead, it offers current best practice advice, assessment, guidance, learning, and resource direction, enabling the foundation of a learning culture and a high performance mindset.

The recipient of the award under this cooperative agreement will: (1) Coordinate chapters of the guidebook on leadership, assessments, intervention, change management and other related topics; (2) schedule and provide logistics for one face-to-face meeting (may also include stipend fees) for NIC selected guidebook team members of up to ten members; (3) compile an information library of resources and case studies from organizations going through organizational change; (4) provide the guidebook in hardcopy and electronic Word 2003 or higher format; (5) create learning objectives in preparation for a second cycle of the guidebook project to train pilot participants on the prototype guidebook; (6) refine assessment tools previously developed for this project linking assessments to interventions; (7) identify any additional information and/or language that will enhance cohesion of the guidebook for audience member's consumption; and (8) become familiar with Baldrige criteria.

Background: Through a number of prior cooperative agreements, NIC has been developing a definition, identifying characteristics of a high performing correctional organization (HPCO) and developing assessment tools for an HPCO. During 2006, NIC sponsored a workgroup of subject matter experts. The group identified nine categories or core guiding principles

considered as important factors in determining criminal justice system performance on the state or local governance level for community corrections. Those principles are: (1) Leadership and management development, (2) information and knowledge management; (3) comprehensive criminal justice planning, (4) offender management, (5) collaborative partnerships, (6) organizational development, (7) accurate, fair and timely processes, (8) stewardship of public resources, and (9) public safety.

In 2008, the work evolved through a series of interviews, focus groups, sites visits, content analyses, and literature reviews. A group of roundtable members authored the HPCO definition and created a preliminary draft model. The group authored the following definition: An HPCO provides public safety through guiding principles, beliefs, attitudes, and behaviors that the organization as a whole and each member of its workforce embody and promote. An HPCO visibly demonstrates alignment in values-oriented mission statements, vision, and strategic plans; distributive leadership that actively engages performance measures to instigate continuous learning within the work force and among partners; diligent stewardship of resources.

The HPCO realizes it is part of a wider community, which must be related to with open communication and transparency.

Design Preliminary Model: Various models were examined for visual appeal, content, and format to be used by the roundtable members to serve as examples for the creation of the draft HPCO model. The current model is nonlinear, emphasizes nine to ten core values and incorporates the Baldrige National Quality Program criteria.

Required Expertise: Successful applicants should be able to demonstrate that they have the organizational capacity to fulfill all the goals of the project, including experience in organizing and providing ongoing support for complex, multi-year projects, extensive experience in correctional policy and practice, and a record of success in working with correctional agencies on implementation, organizational development, or technical assistance projects. Preference will also be given to applicants with a record of working with interdisciplinary teams in a variety of fields beyond corrections.

Application Requirements: Applications should be concisely written, typed double spaced and reference the "NIC Opportunity Number" and Title provided in this announcement. Please limit the program narrative text to up to 15 double-spaced pages, exclusive of resumes and summaries of experience (do not submit full curriculum vitae). The application package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* January 1 through December 31), a program narrative responding to the requirements in this announcement, a description of the qualifications of the applicant(s), an outline explaining projected costs, and the following forms: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget Information—Non Construction Programs; OMB Standard Form 424B, Assurances—Non Construction Programs (these forms are available at *http://www.grants.gov*); and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*).

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an unbound original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: Up to $100,000 is available for this project, subject to available funding, but preference will be given to applicants who provide the most cost efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the Government, not necessarily the lowest bid. Funds may be used only for the activities that are directly related to the project.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the areas described.

This project will be a collaborative venture with the NIC Administration Division. A blog for the project is on NIC's website. Literature analysis summaries, meeting reports, the annotated bibliography, and a Web-based survey can be found on the blog. Visit *http://community.nicic.org/blogs/hpco/default.aspx* today!

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows:

Programmatic: Are all of the tasks adequately discussed? Is there a clear statement of how each of the tasks will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational: Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate the high level of competency in high performing organizations, culture, Baldrige criteria, and change management needed to complete the tasks? Does the applicant organization have the necessary experience and organizational capacity to complete all eight goals of the project? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the 8-month timeframe?

Project Management/Administration: Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and work sheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10M15. This number should appear as a reference line in the cover letter, where the opportunity number is requested on the Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–17487 Filed 7–16–10; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,832]

Carestream Health, Inc. Medical X-Ray Division Windsor, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 11, 2008, applicable to workers of Carestream Health, Inc., X-Ray/Mammography Film Division, Windsor, Colorado. The notice was published in the **Federal Register** on September 24, 2008 (73 FR 55136).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medical x-ray film.

New information shows that the subject firm name was not identified in its entirety. The company official confirmed that the correct name of the subject firm should read "Carestream Health, Inc., Medical X-Ray Division, Windsor, Colorado".

Based on this information, the Department is amending the certification to correctly identify the name of the subject firm and extend worker adjustment assistance eligibility to all workers of Carestream Health, Inc., Medical X-Ray Division, Windsor, Colorado.

The amended notice applicable to TA–W–63,832 is hereby issued as follows:

All workers of Carestream Health, Inc., Medical X-Ray Division, Windsor, Colorado who became totally or partially separated from employment on or after August 6, 2007, through September 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of June, 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17455 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,774]

CRH North America Inc., Including On-Site Leased Workers from KForce and Global Technology Associates, Warren, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on March 11, 2010, applicable to workers of CRH North America Inc., including on-site leased workers from KForce, Warren, Michigan. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21356).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to research, development, and administrative services (*i.e.* accounting, purchasing, and sales services).

The company reports that workers leased from Global Technology Associates were employed on-site at the Warren, Michigan location of CRH North America Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Global Technology Associates working on-site at the Warren, Michigan location of CRH North America Inc.

The amended notice applicable to TA–W–72,774 is hereby issued as follows:

All workers of CRH North America Inc., including on-site leased workers from KForce and Global Technology Associates, Warren, Michigan, who became totally or partially separated from employment on or after October 14, 2008, through March 11, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of June 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17448 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,211]

Wapakoneta Machine Company, Currently Known as EF Industrial Technologies, Inc., Wapakoneta, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 17, 2010, applicable to workers of Wapakoneta Machine Company, Wapakoneta, Ohio. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32223).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of machine knives.

New information shows that as of early 2010, Wapakoneta Machine Company is currently known as EF Industrial Technologies, Inc. Some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account under the name EF Industrial Technologies, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of machine knives.

The amended notice applicable to TA–W–73,211 is hereby issued as follows:

All workers of Wapakoneta Machine Company, currently known as EF Industrial Technologies, Inc., Wapakoneta, Ohio became totally or partially separated from employment on or after December 8, 2008, through May 17, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date

of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 29th day of June 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17451 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,961; TA–W–72,961A]

Inteva Products, LLC Adrian, Michigan; Inteva Products, LLC Troy, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 7, 2010, applicable to workers of Inteva Products, LLC, Adrian, Michigan. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30072).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of component parts (automotive instruments and door panels) for automobiles.

New findings show that worker separations occurred during the relevant time period at the Troy, Michigan location of Inteva Products, LLC. The Troy, Michigan location provides human resources, administrative functions, engineering and financial services for the subject firm.

Accordingly, the Department is amending the certification to include workers of the Troy, Michigan location of Inteva Products, LLC.

The intent of the Department’s certification is to include all workers of the subject firm who were adversely affected as a secondary component supplier of component parts (automotive instruments and door panels) for automobiles to a TAA certified firm.

The amended notice applicable to TA–W–72,961 is hereby issued as follows:

All workers of Inteva Products, LLC, Adrian, Michigan (TA–W–72,961 and Inteva Products, LLC, Troy, Michigan (TA–W–72,961A), who became totally or partially separated from employment on or after November 3, 2008, through May 7, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 29th day of June, 2010.

Del Min Amy Chen

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17449 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,585]

Whirlpool Corporation, Evansville Division, Including On-Site Leased Workers From Andrews International, Inc., M.H. Equipment, and Kenco Logistics Services, LLC, Evansville, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 19, 2010, applicable to workers of Whirlpool Corporation, Evansville Division, Evansville, Indiana. The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10321). The notice was amended on May 25, 2010 to include on-site leased workers from Andrews International, Inc. The notice was published on the **Federal Register** on June 7, 2010 (75 FR 32221).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of top freezer refrigerators and residential ice makers.

The company reports that workers leased from MH Equipment and Kenco Logistics Services, LLC, were employed on-site at the Evansville, Indiana location of Whirlpool Corporation, Evansville Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from MH Equipment and Kenco Logistics Services, LLC working on-site at the Evansville, Indiana location of Whirlpool, Evansville Division.

The intent of the Department’s certification is to include all workers employed at Whirlpool Corporation, Evansville Division, Evansville, Indiana who were adversely affected by a shift in production of top freezer refrigerators and residential ice makers to Mexico.

The amended notice applicable to TA–W–72,585 is hereby issued as follows:

All workers of Whirlpool Corporation, Evansville Division, including on-site leased workers from Andrews International, Inc., Kenco Logistics Services, LLC and MH Equipment, Evansville, Indiana, who became totally or partially separated from employment on or after December 6, 2008, through January 19, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 30th day of June 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17457 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,411]

Emerson Power Transmission, a Division of Emerson Electric Co., Including On-Site Leased From Challenge Industries, Manpower, Morris Protective Services, Rogan’s Corners, and Adecco, Ithaca, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on May 13, 2010, applicable to workers of Emerson Power Transmission, a Division of Emerson Electric Co., including on-site leased workers from Challenge Industries, Manpower, Morris Protective Services and Rogan’s Corners, Ithaca, New York. The notice was published in the **Federal Register** on May 28, 2010 (75 FR 30067).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in

activities related to the production of industrial chains, clutches, unmounted bearings, and mounted bearings.

The company reports that workers leased from Adecco were employed on-site at the Ithaca, New York, location of Emerson Power Transmission, a Division of Emerson Electric Co. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Adecco working on-site at the Ithaca, New York, location of Emerson Power Transmission, a Division of Emerson Electric Co.

The amended notice applicable to TA–W–72,411 is hereby issued as follows:

All workers of Emerson Power Transmission, a division of Emerson Electric Company, including on-site leased workers from Challenge Industries, Manpower, Morris Protective Services, Rogan's Corners, and Adecco, Ithaca, New York, who became totally or partially separated from employment on or after September 21, 2008, through May 13, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 30th day of June 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17456 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,596]

Colville Indian Precision Pine, Colville Tribal Enterprise Corporation, Wood Products Division, Including On-Site Contract Workers From C & K General Contractor, Doran Richter Logging, ERB Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jus'N Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, McCuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking and Stensgar Logging, Omak, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on May 20, 2010, applicable to workers of Colville Indian Precision Pine, Colville Tribal Enterprise Corporation Wood Products Division, Omak, Washington. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32223).

At the request of the company and State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of boards and dimensional lumber of ponderosa pine.

The company reports that contract workers from C & K General Contractor, Doran Richter Logging, Erb Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jes'N Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, McCuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking and Stensgar Logging were employed on-site at the Omak, Washington location of Colville Indian Precision Pine, Colville Tribal Enterprise Corporation, Wood Products Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be included in this certification.

Based on these findings, the Department is amending this certification to include the above mentioned contract workers working on-site at the Omak, Washington location of Colville Indian Precision Pine, Colville Tribal Enterprise Corporation Wood Products Division.

The amended notice applicable to TA–W–73,596 is hereby issued as follows:

All workers of Colville Indian Precision Pine, Colville Tribal Enterprise Corporation Wood Products Division, including contract workers from C & K General Contractor, Doran Richter Logging, Erb Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jes'N Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, McCuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking and Stensgar Logging, Omak, Washington, who became totally or partially separated from employment on or after February 24, 2009, through May 20, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 29th day of June 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17453 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,562]

Colville Indian Plywood and Veneer Colville Tribal Enterprise Corporation Wood Products Division Including On-Site Contract Workers From C & K General Contractor, Doran Richter Logging, Erb Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jus'n Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, Mccuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking And Stensgar Logging Omak, Washington; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on May 20, 2010, applicable to workers of Colville Indian Plywood and Veneer, Colville Tribal Enterprise Corporation Wood Products Division, Omak, Washington. The notice was published

in the **Federal Register** on June 7, 2010 (75 FR 32223).

At the request of the company and State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of boards and dimensional lumber of ponderosa pine.

The company reports that contract workers from C & K General Contractor, Doran Richter Logging, Erb Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jes'N Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, and McCuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking and Stensgar Logging were employed on-site at the Omak, Washington location of Colville Indian Plywood and Veneer, Colville Tribal Enterprise Corporation Wood Products Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be included in this certification.

Based on these findings, the Department is amending this certification to include the above mentioned contract workers working on-site at the Omak, Washington location of Colville Indian Plywood and Veneer, Colville Tribal Enterprise Corporation Wood Products Division.

The amended notice applicable to TA–W–73,596 is hereby issued as follows:

All workers of Colville Indian Plywood and Veneer, Colville Tribal Enterprise Corporation Wood Products Division, including workers from C & K General Contractor, Doran Richter Logging, Erb Corporation, Francis L. Seymour, Gene Matt Trucking, George Marchand, Havillah Logging, Joe Peone, Joe Somday Logging, Jes'N Logging, Laramie Logging, Lone Rock Contracting, Mawdsley Logging, McCuen Jones, San Poil Logging, Scott Thorndike, Silver Nichol Trucking and Stensgar Logging, Omak, Washington, who became totally or partially separated from employment on or after February 24, 2009, through May 20, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 30th day of June, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17452 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 29, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 29, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 1st of July 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/21/10 and 6/25/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74268	Peltier Glass Company (Workers)	Ottawa, IL	06/21/10	06/03/10
74269	iMedX, Inc. (State/One-Stop)	Shelton, CT	06/21/10	06/18/10
74270	Lockheed Martin Systems Integration (State/One-Stop)	Endicott, NY	06/22/10	06/21/10
74271	BAE Systems Platform Solutions (State/One-Stop)	Johnson City, NY	06/22/10	06/21/10
74272	Medtronic (State/One-Stop)	Mounds View, MN	06/22/10	06/21/10
74273	Doyle and Roth Manufacturing Company, Inc. (Union)	Simpson, PA	06/22/10	06/16/10
74274	Vail—Ballou Press, Inc. (State/One-Stop)	Binghamton, NY	06/22/10	06/21/10
74275	Welch Allyn, Inc. (Company)	Branchburg, NJ	06/22/10	06/16/10
74276	MedUS Services, LLC (State/One-Stop)	Endicott, NY	06/22/10	06/21/10
74277	Westcode, Inc. (State/One-Stop)	Binghamton, NY	06/22/10	06/21/10
74278	Saint Joseph Industries, Inc. (State/One-Stop)	Battle Creek, MI	06/22/10	06/10/10
74279	Soo Tractor Sweeprake Company (Workers)	Sioux City, IA	06/23/10	06/12/10
74280	Whirlpool Benton Harbor Division (Company)	Benton Harbor, MI	06/23/10	06/18/10
74281	Humana (Workers)	Green Bay, WI	06/23/10	06/11/10
74282	Diebold, Inc. (Workers)	North Canton, OH	06/23/10	06/10/10
74283	Highland Lakes Software (State/One-Stop)	Austin, TX	06/23/10	06/15/10
74284	ITW ChronoTherm (Company)	Elmhurst, IL	06/23/10	06/14/10
74285	Invensys Rail Group (Workers)	Rancho Cucamonga, CA	06/24/10	06/17/10
74286	Pearson Education (State/One-Stop)	Glenview, IL	06/24/10	06/08/10
74287	National Manufacturing Company and National Sales Company (Company).	Sterling, IL	06/24/10	06/21/10

APPENDIX—Continued

[TAA petitions instituted between 6/21/10 and 6/25/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74288	National Manufacturing Company and National Sales Company (Company).	Rock Falls, IL	06/24/10	06/21/10
74289	Caye Upholstery, LLC (Workers)	New Albany, MS	06/24/10	06/22/10
74290	Supermedia (State/One-Stop)	Middleton, MA	06/24/10	06/23/10
74291	South Central Workforce Investment Board (Company)	West Plains, MO	06/24/10	06/23/10
74292	Precision Dynamics Corporation (Company)	San Fernando, CA	06/24/10	06/14/10
74293	The Boeing Company (Company)	Long Beach, CA	06/24/10	06/07/10
74294	Travel Adventures (Workers)	Lapeer, MI	06/24/10	06/23/10
74295	Diversco Integrated Services (Company)	Dyersburg, TN	06/25/10	06/24/10
74296	MeadWestvaco Corporation (Company)	Sidney, NY	06/25/10	06/21/10
74297	Aero-Metric, Inc. (State/One-Stop)	Seattle, WA	06/25/10	06/24/10
74298	The Travelers Insurance Company (Workers)	Hartford, CT	06/25/10	06/22/10
74299	Anthem Blue Cross and Blue Shield of Maine (Company)	South Portland, ME	06/25/10	06/24/10
74300	TAPP Technologies (Workers)	Clackamas, OR	06/25/10	06/24/10
74301	Durabond (Union)	Steelton, PA	06/25/10	06/24/10
74302	Innatech, LLC (State/One-Stop)	Lebanon, OH	06/25/10	06/16/10
74303	Agy Holding Corporation (Union)	Huntingdon, PA	06/25/10	06/24/10
74304	Robin Manufacturing, U.S.A., Inc. (Company)	Hudson, WI	06/25/10	06/23/10

[FR Doc. 2010–17454 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,067]

Slash Support, Inc. Gamehouse Products Support Workers South Jordan, UT; Notice of Revised Determination on Reconsideration

By application dated March 25, 2010, the Department of Labor (Department) received a request for administrative reconsideration of the Department's Notice of negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Slash Support, Inc., Gamehouse Products Support Workers, South Jordan, Utah. The negative determination was issued on February 26, 2010. The Department's Notice of determination was published in the **Federal Register** on April 23, 2010 (75 FR 21362). The subject workers provide technical support services for the cybernet.

The determination was based on the finding that the subject workers did not meet the employment criterion.

In the request for reconsideration, the petitioner supplied new information regarding the number of workers separated from the subject firm.

During the reconsideration investigation, the Department received additional information from the subject firm which revealed that a significant proportion or number of workers at the subject firm was totally or partially separated, or threatened with such separation; the supply of technical support services declined at the subject firm during the period of investigation; increased imports by the subject firm's major declining customers of services like or directly competitive with the technical support services supplied by the subject firm; and the increased imports of technical support services contributed importantly to worker separations at the subject firm.

Based on the additional information obtained during the reconsideration investigation, the Department determines that the criteria set forth in Section 222(a) have been met.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Slash Support, Inc., GameHouse Products Support Workers, South Jordan, Utah, who were engaged in employment related to the supply of technical support services for the cybernet, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Slash Support, Inc., GameHouse Products Support Workers, South Jordan, Utah, who became totally or partially separated from employment on or after October 28, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 25th day of June, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17450 Filed 7–16–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[10–083]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Brenda J. Maxwell, Office of the Chief Information Officer, Mail Suite 2S71, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the information collection instrument(s) and instructions should be directed to Brenda J. Maxwell, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S71, Washington, DC 20546, (202) 358–4616, *brenda.maxwell@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA Langley Research Center has a need to baseline employees' work environment. The intent is to use a valid and reliable survey that can assess employees' (both civil servants and on-site contractors) perceptions of their current work environment. The results of the survey will establish a baseline and provide general themes on areas to focus on in order to enhance creativity and innovation at the Center.

II. Method of Collection

Electronic.

III. Data

Title: The KEYS Creativity and Innovation Survey.

OMB Number: 2700–XXXX.

Type of Review: Regular.

Affected Public: Individuals and household.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Brenda J. Maxwell,

NASA PRA Clearance Officer.

[FR Doc. 2010–17566 Filed 7–16–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–082)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Thursday, August 12, 2010, 1 p.m. to 4 p.m. EDT.

ADDRESSES: This meeting will take place telephonically. Any interested person may contact Ms. Marian Norris to receive a toll free number and pass code needed to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topic:

Earth Science Program's Annual Performance Appraisal and Rating on Fiscal Year 2010 Government Performance and Results Act Metrics.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: July 12, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–17564 Filed 7–16–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 18, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape,

and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value. Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Office of Security Services (N1–16–09–3, 1 item, 1 temporary item). Master files of an electronic information system that contains geospatial data and other information relating to facility security that is used to assess risks and vulnerability, develop countermeasures, and carry out other aspects of physical security analysis and decision making.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–09–13, 3 items, 3 temporary items). Records relating to the agency web site, including web site management and operations records and web content that is not unique. Web content that is unique is either covered by previously approved schedules or will be scheduled in the future.

3. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration (N1–545–10–2, 3 items, 3 temporary items). Records relating to the agency web site, including web site management and operations records and web content that is not unique. Web content that is unique is either covered by previously approved schedules or will be scheduled in the future.

4. Department of the Army, Agency-wide (N1–AU–10–80, 2 items, 2 temporary items). Master files of electronic information systems that are used to manage overseas deployments, training, and evaluations of Reserve Components. Records include unit data, commander's training assessments, and training lists.

5. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–09–5, 1 item, 1 temporary item). Master files of an electronic information system that contains treatment recommendations for medical conditions for use by clinicians.

6. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–10–4, 4 items, 4 temporary items). Data use agreement forms and master files of an electronic information system relating to agreements made with outside entities that specify the terms under which data subject to the Privacy Act is provided to them.

7. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–10–6, 4 items, 4 temporary items). Correspondence files relating to general inquiries received from beneficiaries, providers, and others.

8. Department of Housing and Urban Development, Office of Single Family Housing (N1–207–09–1, 1 item, 1 temporary item). Master files of an electronic information system used to track and maintain information concerning the participation of lenders in Federal Housing Administration programs.

9. Department of the Interior, Office of Surface Mining and Reclamation Enforcement (N1–471–10–3, 1 item, 1 temporary item). Master files of an electronic information system used to manage coal reclamation fee assessments, collections, penalty payments, and audits.

10. Department of Justice, Agency-wide (N1–60–10–8, 2 items, 2 temporary items). Agreements, reports, and other records relating to agreements made by the agency with Federal, state, and local agencies that permit computerized comparisons of automated data for such purposes as determining eligibility for benefits or assistance, recouping payments, or collecting delinquent debts.

11. Department of Justice, Agency-wide (N1–60–10–20, 2 items, 2 temporary items). Strategic plans covering agency components and related background files. Strategic plans for the agency as a whole were previously approved for permanent retention.

12. Department of Justice, Justice Management Division (N1–60–10–3, 2 items, 1 temporary item). Requests for funding for mediators/professional neutrals used for dispute resolution by agency attorneys. Proposed for permanent retention are master files of an electronic information system that contains data concerning such funding requests.

13. Department of Justice, Justice Management Division (N1–60–10–21, 2 items, 2 temporary items). Requests for original classification authority submitted by agency offices and briefing materials for personnel granted security clearances.

14. Department of Justice, Office of Justice Programs (N1–423–09–6, 1 item, 1 temporary item). Master files of an electronic information system used to manage community partnership grants, including the approval process and the administration of grants.

15. Department of Justice, Office of Public Affairs (N1–60–10–2, 3 items, 2 temporary items). Content posted to social media for public affairs purposes, except for content posted to the agency blog, which is proposed for permanent retention.

16. Department of Justice, Federal Bureau of Investigation (N1–65–09–25, 7 items, 7 temporary items). Reports, training records, and other materials relating to the agency's electronic surveillance program.

17. Department of Justice, Federal Bureau of Investigation (N1–65–09–28, 2 items, 1 temporary item). Access audit logs of an electronic information system that contains data on individuals involved in child pornography and related activities. Master files of this system are proposed for permanent retention.

18. Department of Justice, Federal Bureau of Investigation (N1–65–10–12, 1 item, 1 temporary item). Data received from international law partners that is included in an electronic information system that contains data concerning known and suspected terrorists. The other data in this system was previously approved for disposal.

19. Department of Justice, Federal Bureau of Investigation (N1–65–10–13, 1 item, 1 temporary item). Reference copies of information printed out from an electronic information system which maintains sensitive source reporting and is managed by the Central Intelligence Agency.

20. Department of Justice, Federal Bureau of Investigation (N1–65–10–20, 6 items, 4 temporary items). Records included in the agency's automated electronic surveillance recordkeeping system that reference individuals whose identity could not be determined who were party to communications or present in locations that were monitored or recorded electronically. Also included are audit records relating to the system. Proposed for permanent retention are references to individuals whose identities could be determined, including individuals who were the targets of the surveillance as well as individuals whose communications were overheard or intercepted.

21. Department of the Navy, Agency-wide (N1–NU–10–3, 10 items, 7 temporary items). Routine video and communications monitoring records of shipboard activities. Materials accumulated during direct armed contact with a hostile force are proposed for permanent retention.

22. Department of State, Bureau of Consular Affairs (N1–59–09–40, 2 items, 2 temporary items). Records included in an electronic case management system used to track, monitor, and report on services provided to U.S. citizens traveling or living abroad. Records relate to such matters as death notifications, financial assistance, and lost or stolen passports.

23. Department of State, Bureau of Educational and Cultural Affairs (N1–59–09–30, 2 items, 1 temporary item). Outputs associated with an electronic information system that contains data on exchange programs sponsored by Federal agencies. Proposed for permanent retention are the system's master files, including descriptions of exchange programs, sponsoring agency, funding data, and other information.

24. Department of State, Bureau of Educational and Cultural Affairs (N1–59–09–33, 2 items, 2 temporary items). Master files and outputs associated with an electronic information system that contains data on the agency's international visitors leadership program, including information concerning funding, participants, and organizations administering projects.

25. Department of State, Office of the Legal Advisor (N1–59–09–44, 2 items, 1 temporary item). Case files relating to litigation arising from the North American and Central American Free Trade Agreements that lack historical significance or do not set a precedent. Case files of historical significance or that set a precedent are proposed for permanent retention.

26. Department of Transportation, Federal Highway Administration (N1–406–10–3, 1 item, 1 temporary item). Master files of an electronic information system that contains research data and test results relating to pavement materials and construction.

27. Department of Transportation, Federal Railroad Administration (N1–399–07–4, 2 items, 1 temporary item). Schedules of daily activities and calendars accumulated by senior officials and their staff, excluding the Administrator and Deputy Administrator, whose schedules and calendars are proposed for permanent retention.

28. Department of the Treasury, Office of the Inspector General (N1–56–09–23, 2 items, 2 temporary items). Master files and system documentation of an electronic information system used to track and manage all aspects of audits.

29. Department of the Treasury, Internal Revenue Service (N1–58–10–9, 1 item, 1 temporary item). Case files that relate to projects in which taxpayer returns are sampled and analyzed to identify potential areas of noncompliance in order to take corrective action.

30. Department of the Treasury, Office of Thrift Supervision (N1–483–09–2, 13 items, 7 temporary items). General program files accumulated below the Director and Deputy Director level, files relating to the review of legislation relating to the thrift industry, case files relating to litigation lacking in significance, drawings relating to facilities, and other routine program records. Proposed for permanent retention are such records as program files of the Director and Deputy Director, publications and policy documents relating to the agency's mission, reports to Congress, significant litigation files, program records of the Chief Counsel, and reports of examination and other records relating to thrift institutions.

31. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–10–3, 1 item, 1 temporary item). Master files of an electronic information system used to manage and track vocational rehabilitation cases.

32. American Battle Monuments Commission, Agency-wide (N1–117–10–1, 23 items, 11 temporary items). Funding records relating to the establishment of the National World War II Memorial, including such records as correspondence soliciting donations, files on major donors, and funding status reports. Also included are routine correspondence files and web site content records. Proposed for permanent retention are such records as minutes of meetings, files of the Chairman, public relations files, plans and drawings, and records relating to site selection.

33. Federal Communications Commission, Media Bureau (N1–173–10–3, 2 items, 2 temporary items). Records relating to inactive or resolved informal cases that stem from regulations that prohibit restrictions that impair the use of antennas for receiving video programming.

34. Office of the Director of National Intelligence, Office of the General Counsel (N1–576–10–2, 13 items, 7 temporary items). Background files relating to legal opinions, litigation files that lack historical significance, background files relating to the review of proposed legislation, non-substantive working papers, and other records relating to legal matters. Proposed for permanent retention are such records as legal opinions, historically significant litigation files, policy and oversight reports, and reviews of proposed legislation.

35. Peace Corps, Office of Congressional Relations (N1–490–10–1, 3 items, 1 temporary item). Correspondence regarding constituent issues sent the agency by members of Congress. Proposed for permanent retention are correspondence with and reports submitted to Congress and briefing materials provided to agency officials and nominees testifying before Congress.

36. U.S. District Courts, Agency-wide (N1–21–10–1, 2 items, 2 temporary items). Surveillance recordings used by U.S. Marshals for security purposes, including routine recordings and recordings that deal with security incidents.

37. U.S. Sentencing Commission, Agency-wide (N1–539–10–1, 41 items, 21 temporary items). Legislative files, program management records accumulated below the level of staff and deputy directors, training records, correspondence with inmates and the general public, litigation subject research files, copies of case files received from Federal courts, and other records. Also included are web site content and management records. Proposed for permanent retention are such records as Commissioner subject files, transcripts and other records accumulated in connection with congressional hearings and public meetings, legal briefs concerning sentencing issues, publications, litigation files, and significant program management files accumulated at the staff director level.

Dated: July 13, 2010.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–17623 Filed 7–16–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Literature (application review): August 4–5, 2010 in Room 716. A portion of this meeting, from 12 p.m. to 12:30 p.m. on August 5th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on August 4th, and from 9 a.m. to 12 p.m. and 12:30 p.m. to 4 p.m. on August 5th, will be closed.

Literature (application review): August 6, 2010 in Room 716. This meeting, from 9 a.m. to 5:15 p.m., will be closed.

Theater (application review): August 16, 2010 in Room 716. This meeting, from 9 a.m. to 4:30 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 14, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–17533 Filed 7–16–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2009–0517]

License Nos. DPR–31 and DPR–41; Florida Power & Light Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated January 11, 2009, as amended on July 10, 2009, and a petition dated January 5, 2010, filed by Mr. Thomas Saporito, hereinafter referred to as the "Petitioner." The petition was supplemented on March 19, May 7, and July 10, 2009. The petition concerns the operation of the Turkey Point Nuclear Generating Station, Units 3 and 4 and St. Lucie Nuclear Power Plant, Units 1 and 2.

In the January 11, 2009, petition, the Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000 and a confirmatory order modifying Florida Power & Light Company (FPL) License Nos. DPR–31 and DPR–41. The Petitioner amended the January 11, 2009, petition during a teleconference on July 10, 2009, to request that the NRC require FPL to create a monetary fund rather than issuing a civil penalty to FPL. By letter dated January 5, 2010, the Petitioner filed a separate petition requesting that the NRC issue a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and credibly determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation. The NRC consolidated the two petitions on the basis that the issues are similar and Mr. Saporito was the principal external stakeholder for both petitions.

As the basis for the January 11, 2009, as amended on July 10, 2009, request, the Petitioner believes that there are weaknesses in the employee concerns program at Turkey Point due to fear of retaliation when a safety issue is raised to FPL management. Also, the Petitioner believes that an employee retention bonus agreement used by FPL contains language that violates Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.7(f). As the basis for the January 5, 2010, request, the Petitioner stated that he has complained to the NRC for the better part of 20 years about the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point and has spread to St. Lucie over the years. Mr. Saporito considers such operation to be potentially unsafe and to be in violation of Federal regulations.

On March 19, May 7, and July 10, 2009, the NRC Office of Nuclear Reactor Regulation's Petition Review Board and the Petitioner held conference calls to clarify the basis for the petition.

The NRC sent a copy of the Proposed Director's Decision to the petitioner and to the licensee for comment on April 28, 2010. The petitioner responded with comments on May 28, 2010. FPL did not provide any comments. A summary of the comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the NRC should deny the requests, to issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000 or establishment of a monetary fund, a confirmatory order modifying FPL License Nos. DPR–

31 and DPR–41, and a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of *Code of Federal Regulations* (10 CFR) Section 2.206 (DD–10–01), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm .html.*

In summary, the NRC has performed Problem Identification and Resolution inspections at Turkey Point and St. Lucie nuclear power plants. The inspections concluded that the corrective action program (CAP) processes and procedures were effective; thresholds for identifying issues were appropriately low; and problems were properly evaluated and corrected within the CAP. Therefore, the NRC concludes that public health and safety have not been affected by licensee-identified weaknesses in the employees concern program. The NRC has also reviewed FPL's retention bonus agreement and has concluded that it does not violate 10 CFR 50.7(f).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 9th day of July 2010.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

Nuclear Regulatory Commission Office of Nuclear Reactor Regulation

In the Matter of: Florida Power & Light Company. Docket Nos. 50–250 and 50–251, License Nos. DPR–31 and DPR–41 Turkey Point Plant, Units 3 and 4.

Director's Decision Under 10 CFR 2.206 (DD–10–01)

I. Introduction

By letter dated January 11, 2009, and amended on July 10, 2009, Mr. Thomas Saporito ("Petitioner") filed a petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), to the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) concerning Turkey Point Nuclear Generating Station, Units 3 and 4. The Petitioner also filed a separate petition pursuant to 10 CFR 2.206 addressed to NRC Chairman Gregory B. Jaczko on January 5, 2010. This petition concerned Turkey Point and St. Lucie. The NRC has combined this second petition with the original petition and amendment.

Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," issued October 2000 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML041770328), outlines the procedure used by the NRC to process petitions filed under 10 CFR 2.206. This procedure aims to provide appropriate participation by petitioners in, and opportunities for the public to observe, the NRC's decision making activities related to a 10 CFR 2.206 petition.

Action Requested

In the January 11, 2009, petition, the Petitioner requested that the NRC take the following actions against FPL, the licensed operator for the Turkey Point facilities:

(1) Issue a "Notice of Violation and Imposition of Civil Penalty" in the amount of $1,000,000.

(2) Issue a confirmatory order modifying FPL License Nos. DPR–31 and DPR–41 as follows:

(a) Effective February 1, 2009, FPL will integrate into its overall program for enhancing the work environment and safety culture at Turkey Point a "Cultural Assessment" conducted by an independent contractor. The Cultural Assessment shall include both a written survey of employees, including supervision and management, and baseline contractors, and confidential interviews of selected individuals. The first assessment shall be completed no later than the second quarter of 2009 and will be performed at least three more times at intervals of 18 to 24 months. In addition, annual surveys will be conducted and shall include, but not be limited to, annual surveys through at least the year 2020. Prior to conducting each annual survey, the licensee shall identify to the NRC Regional Administrator the departments and divisions to be surveyed. The licensee shall submit to the NRC for review all Cultural Assessment results, including all intermediate annual surveys. In addition, within 60 days of receipt of any survey results, the licensee shall provide to the NRC Regional Administrator any plans to address issues raised by the survey results.

(b) FPL shall conduct annual ratings of supervisors and managers by employees through a written assessment tool and provide the same to the NRC through the year 2020.

(c) FPL shall conduct a mandatory continuing training program for all supervisors and managers which shall include:

1. Scheduled training on building positive relationships. The training program shall incorporate the objective of reinforcing the importance of maintaining a safety conscious work environment and assisting managers and supervisors in dealing with conflicts in the work place in the context of safely conscious work environment. The training program shall also include a course entitled "Safely Talking to Each Other" which shall explain how to properly deal with safety concerns raised at Turkey Point.

2. Annual training on the requirements of 10 CFR 50.7 and Title 42 of the *United States Code Annotated,* Section 5851 (42 USCA 5851), through the year 2020, including, but not limited to, what constitutes "protected activity" and what constitutes "discrimination" within the meaning of 10 CFR 50.7 and 42 USCA 5851, and appropriate responses to the raising of safety concerns by employees. Moreover, the training shall stress the freedom of employees in the nuclear industry to raise safety concerns without fear of retaliation by their supervisors or managers.

(d) The licensee shall issue a site-wide publication informing all employees and contractor employees of this Confirmatory Order as well as their rights to raise safety concerns to the NRC and to their management without fear of retaliation.

During a teleconference on July 10, 2009, the Petitioner amended the original petition to request that the NRC require FPL to create a monetary fund rather than issuing a civil penalty to FPL. This fund would be used to enhance FPL's employee concerns program (ECP) by generating cash awards to employees who raise safety concerns; providing wages and benefits to workers who have made retaliation complaints until their complaints have been reviewed; providing training to

plant workers on the ECP and discrimination review process; and upgrading the ECP office facilities.

By letter to Chairman Gregory B. Jaczko dated January 5, 2010, the Petitioner filed a separate petition referencing a January 4, 2010, Florida Public Service Commission document. This document alleges wrongdoing by executive management at the very highest levels of FPL over the protests of several employees. The Petitioner stated that the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point has spread to St. Lucie over the years. The Petitioner requested that the NRC issue a confirmatory order requiring FPL to immediately place the Turkey Point and St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and credibly determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation for so doing. The NRC did not take immediate action based on the staff's determination that there was no immediate threat to public health or safety.

The NRC's acknowledgement letter to the Petitioner, dated November 19, 2009 (ADAMS Accession Number ML091880900), addressed the original petition dated January 11, 2009, and its amendment dated July 10, 2009. In this letter, the NRC accepted for review pursuant to 10 CFR 2.206, concerns regarding the following nine issues raised by the Petitioner:

(1) Management attention to the ECP does not meet expectations; management's awareness of the ECP is superficial, and management has not emphasized the program values to employees.

(2) The ECP is of low quality and does not give the impression that it is important to management.

(3) There is a perception problem with the ECP in the areas of confidentiality and potential retribution. The perception remains as evidenced by surveys, interviews, and the high percentage of anonymous concerns. Previous surveys and assessments identified this perception, but little or no progress has been made in reversing this perception.

(4) The ECP was most frequently thought to be a mechanism to use in addition to discussing concerns with the NRC and not as the first alternative to the Correction Action Program (CAP).

(5) While meeting most of the program requirements and having a technically qualified individual in the ECP coordinator position, the overall effectiveness of the program is marginal.

(6) The ECP representative has very low visibility or recognition in the plant and has not been integrated into the management team or plant activities.

(7) The large percentage of concerns submitted anonymously hampers feedback to concerned individuals. The written feedback process to identified individuals is impersonal and lacks feedback mechanisms for the ECP coordinator to judge the program's effectiveness.

(8) The ECP process also does not provide assurance that conditions adverse to quality identified in the ECP review process would get entered into the CAP, creating potential to miss correction and trending opportunities.

(9) An employee retention bonus agreement used by FPL contains language that violates 10 CFR 50.7(f).

Furthermore, the NRC also consolidated with the January 11, 2009, petition the Petitioner's concern raised in a separate petition dated January 5, 2010, that the chilled environment, which discourages employees from voicing safety concerns, that currently exists at Turkey Point has spread to St. Lucie. The agency took this step for the following two reasons:

(1) The issues are similar.

(2) Mr. Saporito was the principal external stakeholder for both petitions.

Petitioner's Basis for the Requested Actions

The Petitioner explained that the licensee completed a self-assessment of the Turkey Point facility and also performed an assessment of the ECP at Turkey Point. The purpose of the assessment was for the licensee to understand and address weaknesses in the ECP. The assessment identified eight weaknesses. The Petitioner believes that there are weaknesses in the ECP due to fear of retaliation when a safety issue is raised to FPL management. The Petitioner concluded that at least three FPL employees allege that they have been retaliated against for having raised safety concerns at one or more of FPL's nuclear power plants in the last 12-month period. The Petitioner noted the following chronology of events:

(1) On July 16, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty for $100,000 to FPL for retaliating against one of its employees for raising safety concerns at Turkey Point.

(2) On June 5, 2003, the NRC issued a Notice of Violation to FPL for retaliating against one of its employees for raising safety concerns at Turkey Point.

(3) On July 6, 2007, the NRC issued the NRC Problem Identification and Resolution inspection report that stated that inspectors noted reluctance by several departments to utilize the ECP because licensee employees felt that the program only represented management's interest.

(4) On January 7, 2009, the Florida Public Service Commission issued Order No. PSC–09–0024–FOF–EI which concluded that at least one other FPL contractor employee was aware of the "hole drilling" incident at Turkey Point but failed to report the incident in a timely manner. The Petitioner noted that this issue was not reported by the employee due to fear of retaliation from FPL management.

(5) On January 4, 2010, three concerned employees of NextEra Energy Resources wrote a letter to the Florida Public Service Commission stating that "the culture of cover up and intimidating employees into being quiet still persists here at the FPL Group of companies and retaliation is a real fear."

NRC Petition Review Board's Meeting With the Petitioner

On March 19 (ADAMS Accession No. ML090840318), May 7 (ADAMS Accession No. ML092860275), and July 10, 2009 (ADAMS Accession No. ML092860099), the NRC Office of Nuclear Reactor Regulation's Petition Review Board and the Petitioner held conference calls to clarify the basis for the petition. The NRC staff considers transcripts of these meetings to be supplements to the petition. These transcripts are also available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are also accessible from ADAMS in the Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.resource@nrc.gov.*

By letter dated April 22, 2009 (ADAMS Accession No. ML091100274), the NRC staff requested that FPL provide information related to the petition, more specifically, a copy of a blank retention bonus agreement referenced by Mr. Saporito. This information was needed for the NRC staff to complete its review of item nine,

as stated in the November 19, 2009, acknowledgement letter. FPL responded on April 28, 2009 (ADAMS Accession No. ML100640252), and the information provided was considered by the staff in its evaluation of the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to Florida Power & Light Company (FPL, the licensee) for comment by letters dated April 28, 2010. The NRC staff received comments on May 28, 2010, from the Petitioner. No comments were provided to the NRC staff from FPL. The comments and the NRC staff's response to them are included in the director's decision.

II. Discussion

Issues 1–8 concern the effectiveness of the Turkey Point ECP and the licensee's response to issues identified through the ECP and CAP. Operating reactor licensees are not required to implement an ECP, but are required by 10 CFR Part 50, Appendix B, Criterion XVI to establish and implement an effective CAP. The NRC performs Problem Identification and Resolution biennial team inspections with annual follow-up of selected issues at licensed facilities. The goal of these inspections is to establish confidence that the licensee is effectively detecting, correcting, and preventing problems that could impact public health and safety. During the Problem Identification and Resolution inspections, the NRC reviews a sample of employee concerns that were raised through the CAP and ECP as part of its assessment of the licensee's compliance with NRC regulations, regardless of which program the employee uses.

In the latter half of 2008, the licensee conducted a 20 to 30 question survey of the safety conscious work environment (SCWE), fleet-wide. More than 400 employees responded at each site. Through these surveys, FPL identified weaknesses in its program for identifying and correcting issues raised by employees, which included dissatisfaction with the three primary avenues for raising concerns internally (management, CAP, and ECP). With regard to the ECP, the results showed nuclear plant employees are familiar with the ECP, however approximately 20–25 percent of the survey respondents indicated that they lack confidence that the ECP will address their concerns or maintain their confidentiality. A similar percentage of employees also believe that management does not support the ECP.

Based on public conversations between the NRC's Region II office and the licensee, FPL has taken a number of appropriate actions to address these ECP issues at both Turkey Point and St. Lucie, including appointment of a new FPL corporate Nuclear Safety Culture Project Lead, relocation of the offices to address accessibility concerns, implementation of monthly meetings with the new Chief Nuclear Officer, and revision of the program procedures to ensure concerns are addressed appropriately and feedback is obtained from stakeholders. Notably, the process was revised to perform three-month follow-up reviews of corrective actions for nuclear safety concerns brought to the ECP to assess the effectiveness.

The NRC held a public meeting on October 20, 2009 (ADAMS Accession No. ML093090274), at the Region II Office in Atlanta, GA to discuss FPL's processes for addressing employee concerns and planned, fleet-wide corrective actions for addressing FPL-identified weaknesses. The licensee indicated that it planned to implement 86 corrective actions to address the weaknesses.

As stated in Problem Identification and Resolution inspection reports 05000335/2010006 and 05000389/2010006 for St. Lucie dated April 19, 2010, the NRC concluded that based on discussions and interviews with plant employees from various departments, individuals remained aware of the processes for raising concerns, were not reluctant to raise safety concerns to management or the NRC, had initiated CAP items, and participated in the safety culture surveys. These interviews also revealed that plant workers were knowledgeable of the various available methods for raising nuclear safety concerns. Furthermore, the workers communicated recent improvements in station supervision's support of the workers raising issues. None of the workers indicated that they were aware of any examples of being retaliated against for raising safety concerns.

The Problem Identification and Resolution inspection reports also summarized the corrective actions presented to the NRC on October 20, 2009, and the results of those corrective actions. The NRC concluded that FPL initiated a comprehensive plan to improve its safety culture, starting with a root cause evaluation of safety culture issues identified in corporate surveys. From this evaluation, FPL took a number of actions to improve corporate culture, including formalizing the management of employee concerns, taking actions to focus more attention on industrial safety work orders, and improving management oversight of station backlogs and preventive maintenance change requests. At a higher level, FPL is initiating a review of nuclear safety culture issues by the corporate nuclear review board, benchmarking SCWE at other facilities, and planning for effectiveness reviews. The inspections confirmed that FPL scheduled actions had been completed, including the training of senior managers on SCWE and the initiation of routine management reviews on safety culture issues.

The inspectors also met with the newly-appointed station ECP coordinator and the ECP manager. The ECP coordinator described activities that would facilitate more awareness and understanding of the ECP including introducing the program with on-site staff and contractor groups at departmental meetings. Furthermore, FPL has recently relocated the ECP office within the plant protected area and procedures had been developed for uptake of concerns and management of concern resolution. The new process requires close-out of the concern with the concerned individual, typically in a face-to-face meeting.

On April 20, 2010, a public meeting was conducted at the Region II Office in Atlanta, GA to discuss FPL's progress. As of that date, the licensee indicated that it had implemented 71 of the 86 corrective actions and is completing all actions on schedule. The NRC provided a summary of this public meeting, which is publicly available in ADAMS (ADAMS Accession No. ML101110727).

Although the licensee has identified weaknesses in the ECP at Turkey Point and St. Lucie, the NRC has not identified any current substantive issue relating to SCWE or the CAP. Therefore, the NRC does not believe Mr. Saporito's proposed enforcement action is appropriate at this time. The licensee is taking action to improve the effectiveness of the ECP. The NRC's Region II office is scheduled to complete its next Problem Identification and Resolution inspection at Turkey Point in May 2010. The NRC's Region II office will continue to monitor the Turkey Point and St. Lucie CAPs, including the eight items identified by the Petitioner and the actions the licensee is taking to address the FPL-identified weaknesses in the ECP. The NRC's conclusions will be recorded in the next Problem Identification and Resolution inspection reports, which will be made available on the NRC Web site *http://www.nrc.gov/reactors/operating/oversight.html.*

Regarding item 9, Mr. Saporito raised concerns about an FPL employee retention bonus agreement that contains a clause that states: "The Employee shall not, at any time in the future and in any way, disparage the Company * * * or

make any statements that may be derogatory or detrimental to the Company's good name or business reputation * * *" Mr. Saporito asserts that this clause violates 10 CFR 50.7(f).

The purpose of 10 CFR 50.7(f) is to ensure that licensees do not enter into employment agreements that would prohibit, restrict, or otherwise discourage an employee or former employee from providing the NRC with information of regulatory significance. "Nondisparagement" clauses similar to the one in FPL's retention bonus agreement are common in employment agreements. As a general matter, employers and their employees are free to formulate agreements in the context of their employment relationship and within the parameters of the lawful right of parties to contract with each other. For this reason, the NRC should not interfere with these agreements unless it finds such a clause violates 10 CFR 50.7(f), or a clause that does not violate 10 CFR 50.7(f) on its face is applied in a fashion that prevents or retaliates against an employee for engaging in protected activities such as communicating with the NRC.

The NRC has reviewed the FPL employee retention bonus agreement referenced by Mr. Saporito. The language of the agreement makes no mention of providing information to, or cooperating with, NRC or any other governmental agency. Similarly, it makes no reference to engaging in activity that is protected by NRC enabling statutes. For these reasons, the NRC has determined that the agreement does not violate 10 CFR 50.7(f). However, the agreement strays from the guidance the NRC has provided licensees for drafting employment and settlement agreements, available on the NRC Office of Enforcement Web site at *http://www.nrc.gov/about-nrc/regulatory/enforcement/examples-of-restrictive-terms.pdf*, because it does not include specific language making clear that employees can freely engage in protected activities. While not required by 10 CFR 50.7(f), settlement agreements that contain language reinforcing employees' rights to raise safety concerns and communicate with the NRC avoid the possibility of being construed in a way that could violate 10 CFR 50.7(f). The NRC has learned that FPL has discontinued use of the bonus agreement referenced by Mr. Saporito, and that future FPL employment agreements will contain language specifically addressing employees' rights under 10 CFR 50.7, "Employee Protection," in order to avoid any perception that employees are prohibited, restricted, or discouraged from raising safety concerns.

NRC Response to Comments on the Proposed Director's Decision

This section documents the NRC staff's response to Mr. Saporito's comments on the proposed Director's Decision. The NRC issued the proposed Director's Decision on April 28, 2010 (ADAMS Accession No. ML100630413). The NRC received comments from the Petitioner on May 28, 2010 (ADAMS Accession No. ML101760181). The licensee did not provide any comments to the NRC on the proposed Director's Decision. The NRC staff has amended the proposed Director's Decision to acknowledge the Petitioner's comments; however, the NRC staff determined that the comments provided by Mr. Saporito did not provide any relevant additional information and support for the petition that had not already been considered. Thus, the comments did not change the conclusion of the proposed Director's Decision and the final Director's Decision denies the Petitioners' request for enforcement action. The comments and NRC staff's response to them are discussed below:

Summary of Comments

Mr. Saporito states, "notably, NRC determines the quality of a licensee's SCWE by the effectiveness of the licensee's CAP. Therefore, where a licensee fails to properly maintain an effective CAP, there cannot be a satisfactory SCWE at its nuclear facility. Moreover, where a licensee is found by NRC to have discriminated against its employees for raising nuclear safety concerns, the licensee cannot demonstrate the existence of a satisfactory SCWE at its nuclear facility. Finally, where NRC fails to take adequate enforcement action against its licensee for failing to maintain an SCWE at its nuclear facilities, a chilling effect results and places public health and safety in jeopardy." Mr. Saporito supports his conclusion by referencing violations and enforcement action taken by the NRC against Turkey Point and St. Lucie dating from 1996, and by referencing the FPL drop-in meetings on October 20, 2009, and April 20, 2010, to discuss concerns about FPL Nuclear Safety Culture and the ECP at Turkey Point and St. Lucie.

The Petitioner also noted that in a February 2008 inspection report, the NRC noticed an increasing trend in the cross-cutting theme of appropriate and timely corrective action indicating that the underlying weaknesses within the Problem Identification and Resolution cross-cutting area may not yet have been addressed or fully understood to ensure consistent and sustainable future performance. The NRC requested that FPL conduct an independent assessment of the effectiveness of the licensee's corrective action program. Mr. Saporito continues by stating, "As of June 2008, NRC completed its inspections to evaluate the effectiveness of FPL's corrective action program improvement initiatives which the agency had found to be deficient only (three months prior) and for the better part of the previous four assessment periods for the Turkey Point Nuclear Plant. Nonetheless, NRC advised FPL that overall corrective actions developed and implemented for issues were effective in correcting the problems and that employees felt free to raise concerns without fear of retaliation. The NRC considered this longstanding cross-cutting theme closed."

NRC Response to Comments

As stated earlier in this Director's Decision, operating reactor licensees are not required to implement an ECP, but are required by 10 CFR Part 50, Appendix B, Criterion XVI to establish and implement an effective CAP. The NRC performs Problem Identification and Resolution biennial team inspections with annual followup of selected issues at licensed facilities. The goal of these inspections is to establish confidence that each licensee is effectively detecting, correcting, and preventing problems that could impact public health and safety. Based on the results of these inspections the NRC takes any appropriate enforcement action to ensure compliance with 10 CFR Part 50, Appendix B, Criterion XVI.

In the Turkey Point mid-cycle calendar year 2006 assessment letter dated August 31, 2006 (ADAMS Accession No. ML062430288), the NRC identified a substantive cross-cutting issue in problem identification and resolution based on numerous examples of inadequate corrective action related to long-standing plant equipment deficiencies. However, the individual findings involved issues of very low safety significance. In response, FPL developed plans to improve the effectiveness of the CAP. Also, the NRC requested that FPL conduct an independent assessment of the effectiveness of the CAP. Normally, the NRC would have requested FPL to conduct a safety culture assessment since the same substantive cross-cutting issue was identified in four consecutive assessment letters. However, due to FPL already completing an assessment during the inspection period from January to December 2007, the NRC

requested a more targeted independent assessment be completed. The purpose of the independent assessment was to help the licensee identify issues with the CAP and improve the effectiveness of the CAP.

During the next eight calendar quarters, onsite and region-based NRC inspectors monitored plant activities to improve the CAP, and completed in-depth inspections and assessment activities in spring 2007 and summer 2008 to evaluate the effectiveness of FPL's efforts. These inspections included evaluations of the safety conscious work environment. The inspection results were documented in Inspection Reports 05000250/2007008 and 05000251/2007008, 05000250/2008007 and 05000251/2008007, and 05000250/2008008 and 05000251/2008008, available on the NRC public web site. The NRC also held public meetings with FPL in Atlanta, GA to discuss the effectiveness of the actions to improve the CAP.

Based on these inspections and the extensive review of FPL's activities focused on improving the CAP that stretched over a 2-year period (June 2006 to June 2008), the NRC determined that FPL had made progress in improving all areas addressed by the improvement plan. The NRC also determined that employees felt free to raise concerns without fear of retaliation. At that point the NRC staff considered the substantive cross-cutting issue closed.

Recently, the NRC issued two Notice of Violations to Turkey Point and St. Lucie, each of which cited, in part, FPL's failure to implement corrective actions per 10 CFR 50, Appendix B, Criterion XVI. The violation issued to Turkey Point does not reopen the substantive cross-cutting issue that was closed in 2008, but the NRC assessed the finding to determine if a cross-cutting aspect of Problem Identification and Resolution was applicable. As stated in the Turkey Point Final Significance Determination letter dated June 21, 2010 (ADAMS Accession No. ML101730313), the NRC determined that the licensee properly identified the boraflex degradation issue and thoroughly evaluated the problems. Therefore, per Inspection Manual Chapter (IMC) 0310, "Components Within the Cross-Cutting Areas," Problem Identification and Resolution cross-cutting aspect P.1(c) is no longer applicable or valid. However, the NRC determined that the finding had a cross-cutting aspect per IMC 0310, Problem Identification and Resolution, P.1(d) since the licensee did not take appropriate corrective actions to address safety issues and adverse trends in a timely manner, commensurate with their safety significance and complexity.

The NRC considers a cross-cutting aspect for all findings identified at a facility and when the NRC identifies four findings with the same cross-cutting aspect then it becomes a substantive cross-cutting issue. Currently, there are not four findings with the same cross-cutting aspect of Problem Identification and Resolution at Turkey Point or St. Lucie. These two violations identified at Turkey Point and St. Lucie will be tracked by NRC inspectors and evaluated during the next Problem Identification and Resolution inspection.

III. Conclusion

The Petitioner raised issues related to weaknesses in the ECP as a means of getting issues entered into the CAP and "chilling effects" that exist at Turkey Point and are spreading to St. Lucie where employees are dissuaded from freely raising nuclear safety concerns to the NRC or within FPL for fear of retaliation by FPL management.

The NRC has performed Problem Identification and Resolution inspections at Turkey Point and St. Lucie that cover the timeframes indicated by the Petitioner. The inspections concluded that the CAP processes and procedures were effective and thresholds for identifying issues were appropriately low. Furthermore, the NRC is aware of the actions that the licensee is taking to address the FPL identified weaknesses, and the NRC will continue to assess the effectiveness of these actions during the next Problem Identification and Resolution inspection. The NRC determined that FPL had made progress in improving all areas addressed by the improvement plan. The NRC also determined that employees felt free to raise concerns without fear of retaliation. Therefore, the NRC concludes that public health and safety have not been affected by licensee-identified weaknesses in the ECP. The NRC has also reviewed FPL's retention bonus agreement and has concluded that it does not violate 10 CFR 50.7(f).

Based on the above discussion, the Director of the Office of Nuclear Reactor Regulation has decided to deny the Petitioner's request to issue a Notice of Violation and Imposition of Civil Penalty or establishment of a monetary fund and a confirmatory order modifying FPL License Nos. DPR–31 and DPR–41. The actions the licensee is taking make enforcement action unnecessary.

In addition, the NRC is denying the Petitioner's request to place the Turkey Point and the St. Lucie facilities in cold shutdown until such time as the NRC can make a full assessment of the work environments at those facilities and determine whether employees at those facilities are free, and feel free, to raise nuclear safety concerns to FPL management or directly to the NRC without fear of retaliation. As explained above, the NRC has assessed the work environment at these facilities and determined that there are no findings of significance and no threat to public health and safety associated with the identified weaknesses of the ECP at Turkey Point or St. Lucie.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of July 2010.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–17509 Filed 7–16–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, July 22, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 22, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: July 15, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–17661 Filed 7–15–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on July 21, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

Item 1: The Commission will consider a recommendation to propose for public comment a new rule and rule and form amendments under the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934, to reform the regulation of distribution fees paid by registered open-end management investment companies ("funds"). The recommended proposal would provide a new framework for how funds currently use their assets to pay for sales and distribution expenses pursuant to rule 12b-1 under the Investment Company Act, and would revise disclosure requirements for transaction confirmations pursuant to rule 10b-10 under the Securities Exchange Act.

Item 2: The Commission will consider whether to adopt amendments to Part 2 of Form ADV and related rules under the Investment Advisers Act of 1940. The amendments would require investment advisers to provide clients with narrative brochures containing plain English descriptions of the advisers' businesses, services, and conflicts of interest. The amendments also would require advisers to electronically file their brochures with the Commission and the brochures would be available to the public through the Commission's Web site.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 14, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–17599 Filed 7–15–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62478; File No. SR–FICC–2010–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division To Change the Classification of U.S. Branches or Agencies of Non-U.S. Banks From Foreign to U.S. Members

July 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 24, 2010, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the rules of FICC's Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") to change the classification of U.S. branches or agencies of non-U.S. banks from "foreign" to "U.S. members".

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC currently classifies as "foreign" its members that are U.S. branches or agencies of non-U.S. banks ("U.S. Branches"). FICC is proposing to amend the rules of the GSD and MBSD to classify such U.S. Branches as U.S. members, based particularly on the rationale that such U.S. Branches are regulated by U.S. and or state regulators. The proposed rule change harmonizes FICC's rules with those of its affiliates, The Depository Trust Company and National Securities Clearing Corporation, which presently classify U.S. branches of foreign banks as domestic members (based on domestic regulation).[3]

The proposed rule change reflects that the U.S. Branches are regulated by a U.S. regulator and/or state regulator so that an insolvency of such a member would be determined by applicable domestic "ring-fence" laws.[4] The appropriate domestic regulator treats U.S. Branches as U.S. entities for most significant matters. Under the proposed rule changes, such members will be treated as domestic members for all purposes under FICC's rules and procedures, unless FICC states otherwise in the Rules.[5]

[3] This is reflected in Section 2 of DTC's Policy Statements on the Admission of Participants, and Addendum O of NSCC's Rules entitled "Admission of Non-U.S. Entities as Direct NSCC Members".

[4] In the United States, "ring-fencing" refers to the procedure for dealing with branches of agencies of insolvent foreign banks in the United States pursuant to which the state or federal regulator, as applicable, will seize and administer the local assets of an insolvent institution, with a preference for local creditors, in a liquidation that is separate from the liquidation of the parent foreign bank as a whole.

[5] For example, if this Rule change is approved such members will no longer be required to submit annual updates to their foreign legal opinions unless FICC deems it necessary to address legal risk. Applicants in this category will, however, continue to be required to submit an initial foreign

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because the proposed modifications would facilitate FICC's prompt and accurate clearance and settlement of securities transactions by providing consistent treatment to Members that are regulated by a U.S. and/or state regulator and that are subject to a domestic insolvency regime.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FICC–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-02.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2010–02 and should be submitted on or before August 9, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17489 Filed 7–16–10; 8:45 am]

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legal opinion on their home country law with their membership application.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62489; File No. SR–MSRB–2010–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Continuing Disclosure Service of the MSRB Electronic Municipal Market Access (EMMA) System

July 13, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2010, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to amend the continuing disclosure service of its Electronic Municipal Market Access ("EMMA") system to reflect recent Commission amendments to Securities Exchange Act Rule 15c2–12 ("Exchange Act Rule 15c2–12"). The MSRB requests an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than December 1, 2010 and shall be announced no later than five (5) business days prior to the effective date.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently Exchange Act Rule 15c2–12 provides that an underwriter for a primary offering of municipal securities subject to Exchange Act Rule 15c2–12 is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement has undertaken in writing to provide certain items of information to the MSRB. Such items include: (A) Annual financial information; (B) audited financial statements if available and if not included in the annual financial information; (C) notices of certain events ("Rule 15c2–12 Event Notices");[3] and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. Written undertakings are to provide that all continuing disclosure documents submitted to the MSRB shall be accompanied by identifying information as prescribed by the MSRB. Such submissions are made by issuers, obligated persons and their agents to the MSRB through the EMMA continuing disclosure service and are made available to the public through the EMMA Web site for free and through paid subscriptions.

The Commission has recently amended Exchange Act Rule 15c2–12 to modify several provisions relating to the submission of continuing disclosures to the MSRB (the "Rule 15c2–12 Amendment").[4] The Rule 15c2–12 Amendment, among other things: (1) Removes the exemption from the continuing disclosure provisions of Exchange Act Rule 15c2–12 for demand securities;[5] (2) modifies Exchange Act Rule 15c2–12 to establish a timeliness standard for submission of Rule 15c2–12 Event Notices of ten business days after the occurrence of the event; (3) deletes the general materiality condition for certain of the Rule 15c2–12 Event Notices; (4) modifies the language of the Rule 15c2–12 Event Notice regarding adverse tax events;[6] and (5) adds new Rule 15c2–12 Event Notices.[7]

To permit issuers and obligated persons to meet the provisions of the Rule 15c2–12 Amendment on or prior to the compliance date of December 1, 2010 established under the Rule 15c2–12 Amendment, this proposed rule change would modify the language of the EMMA continuing disclosure service to reflect the materiality standard changes under the Rule 15c2–12 Amendment and would modify the list of voluntary event-based disclosures that may be submitted to the EMMA continuing disclosure service to reflect changes in the list of Rule 15c2–12 Event Notices made by the Rule 15c2–12 Amendment.[8]

Upon this proposed rule change becoming effective, the continuing disclosure service of EMMA would accept submissions of, and make publicly available through EMMA, the following categories of event-based continuing disclosure documents:[9]

Rule 15c2–12 Event Notices

- Principal and interest payment delinquencies.
- Non-payment related defaults, if material.
- Unscheduled draws on debt service reserves reflecting financial difficulties.
- Unscheduled draws on credit enhancements reflecting financial difficulties.
- Substitution of credit or liquidity providers or their failure to perform.
- Adverse tax opinions, IRS notices or events affecting the tax status of the security.[10]
- Modifications to rights of security holders, if material.
- Bond calls, if material.[11]
- Defeasances.
- Release, substitution or sale of property securing repayment of the securities, if material.
- Rating changes.
- Tender offers.[12]
- Bankruptcy, insolvency, receivership or similar event of the obligated person[13].
- Merger, consolidation, or acquisition of the obligated person, if material[14].

[3] Under Exchange Act Rule 15c2–12(b)(5)(i)(C), notices of the following events currently are required to be submitted to the MSRB, if material: principal and interest payment delinquencies; non-payment related defaults; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the security; modifications to rights of security holders; bond calls; defeasances; release, substitution, or sale of property securing repayment of the securities; and rating changes.

[4] *See* Release No. 34–62184A; File No. S7–15–09 (May 26, 2010).

[5] Currently primary offerings for demand securities as described in Exchange Act Rule 15c2–12(d)(1)(iii) are exempt from the requirements of Exchange Act Rule 15c2–12.

[6] The Rule 15c2–12 Amendment expands the current language of such Rule 15c2–12 Event Notice category to include adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security or other material events affecting the tax status of the security.

[7] The Rule 15c2–12 Amendment includes the following new Rule 15c2–12 Event Notices: tender offers; bankruptcy, insolvency, receivership, or similar event of the issuer or obligated person; the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and the appointment of a successor or additional trustee, or the change of name of a trustee, if material.

[8] The existing language of the EMMA continuing disclosure service would incorporate the changed list of Rule 15c2–12 Event Notices made by the Rule 15c2–12 Amendment by reference to the then-current provisions of Exchange Act Rule 15c2–12 and therefore no change in the language of the EMMA continuing disclosure service would be made. In addition, the removal of the exemption for demand securities from the continuing disclosure provisions of Exchange Act Rule 15c2–12 does not require changes to the EMMA continuing disclosure service in order to permit submission of disclosures in connection with demand securities.

[9] This proposed rule change does not modify the existing categories of financial/operating data disclosures available through the EMMA continuing disclosure service.

[10] This category would represent the expansion in the 15c2–12 Amendment of the prior category of "adverse tax opinions or events affecting the tax-exempt status of the security" to "adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security." *See* amended Exchange Act Rule 15c2–12(b)(5)(i)(C)(6).

[11] The Rule 15c2–12 Amendment expands this category to include tender offers. *See* amended Exchange Act Rule 15c2–12(b)(5)(i)(C)(8). The EMMA continuing disclosure service currently provides a voluntary event-based notice category of "tender offers/secondary market purchases." The EMMA continuing disclosure service will continue to utilize "bond call" as a separate category from "tender offer."

[12] *Id.* The existing "tender offers/secondary market purchases" category of voluntary event-based notice will be split into a new Rule 15c2–12 Event Notice category of "tender offers" and a voluntary event-based category of "secondary market purchases."

[13] The existing "merger/consolidation/reorganization/insolvency/bankruptcy" category of voluntary event-based notice will be split into a new Rule 15c2–12 Event Notice category of "bankruptcy, insolvency, receivership or similar event of the issuer or obligated person" and a second Rule 15c2–12 Event Notice category of "merger, consolidation or acquisition of the obligated person." *See* amended Exchange Act Rule 15c2–12(b)(5)(i)(C)(12).

[14] *Id.* The full reference to this category under amended Exchange Act Rule 15c2–12(b)(5)(i)(C)(13)

• Appointment of a successor or additional trustee, or the change of name of a trustee, if material.

Additional/Voluntary Event-Based Disclosures (certain communications from the Internal Revenue Service, tender offers, merger/consolidation/reorganization/insolvency/bankruptcy and change of trustee are no longer reflected as additional/voluntary event-based disclosures).

• Amendment to continuing disclosure undertaking.

• Change in obligated person.

• Notice to investors pursuant to bond documents.

• Certain communications from the Internal Revenue Service.

• Secondary market purchases.

• Bid for auction rate or other securities.

• Capital or other financing plan.

• Litigation/enforcement action .

• Change of tender agent, remarketing agent, or other on-going party.

• Derivative or other similar transaction.

• Other event-based disclosures.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act,[15] which provides that the MSRB's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that it effectuates the Commission's Rule 15c2–12 Amendment under the Act. In addition, the proposed rule change serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The proposed rule change would aid in providing additional information for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities without barriers to obtaining such information. Broad access to additional continuing disclosure documents through the continuing disclosure service of EMMA should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. In addition to making the additional documents and information available for free on the EMMA portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than December 1, 2010 and shall be announced no later than five (5) business days prior to the effective date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2010–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–05 and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17492 Filed 7–16–10; 8:45 am]

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is "the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material."

[15] 15 U.S.C. 78o–4(b)(2)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62488; File No. SR–NYSEAmex–2010–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Establishing a Fee and Credit Structure for Trading Nasdaq-Listed Securities on the Exchange Pursuant to Unlisted Trading Privileges and Implementing a New Fee for Crossing Session II for Both Listed and Traded Securities

July 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) establish a fee and credit structure for trading Nasdaq-listed securities on the Exchange pursuant to a grant of unlisted trading privileges ("Nasdaq Securities") and (ii) implement a new fee for Crossing Session II for both listed and traded securities. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) establish a fee and credit structure for trading Nasdaq Securities and (ii) implement a new fee for Crossing Session II for both listed and traded securities.

a. Background

In a related filing, the Exchange has proposed to trade Nasdaq Securities as a pilot program on NYSE Amex Equities, using the same market structure, systems and facilities it uses to trade its listed securities in accordance with the same trading rules, subject to a few differences. The Exchange has proposed that the Nasdaq Security pilot program commence on July 13, 2010.[3]

b. Proposed Fees and Rebates for Trading Nasdaq Securities

As with listed securities, the principal categories of market participants for trading Nasdaq Securities will include: Members and member organizations, customers, Floor brokers, Designated Market Makers ("DMMs") and Supplemental Liquidity Providers ("SLPs"). Thus, the Exchange's proposed fee and credit structure for trading Nasdaq Securities is very similar to that for its listed securities.

The principle [sic] difference between the pricing for Exchange-listed securities and Nasdaq Securities is that, because there will not be an opening or closing auction for Nasdaq Securities on the Exchange, there are no limit or market "At the Close" ("MOC/LOC"), "At the Opening" ("OPG"), or "Closing Offset" ("CO") orders and thus no differentiated pricing for such transactions.

The Exchange notes that the initial pricing proposed herein is subject to review and may be changed.

i. Fees for Taking Liquidity

For transactions in Nasdaq Securities with a share price of at least $1.00, the Exchange proposes a fee of $0.0021 per share for taking liquidity from the Exchange; however, for Floor broker discretionary e-quotes and verbal agency interest the Exchange proposes to charge $0.0005 per share. For transactions in Nasdaq Securities with a price of less than $1.00, the Exchange proposes a fee of .20% of the total dollar value of the transaction for all market participants.

ii. Routing Fees

The Exchange proposes a single set of routing fees for Nasdaq Securities across all market participants. For transactions in Nasdaq Securities with a share price of at least $1.00, the Exchange proposes a routing fee of $0.0029 per share, and for transactions in Nasdaq Securities with a price of less than $1.00, the Exchange proposes a routing fee equal to .29% of the total dollar value of the transaction.

iii. Customer, Floor Broker, Member and Member Organization Credits [4]

For customers, Floor brokers, members and member organizations, the Exchange proposes to pay a credit of $0.0019 per share when adding liquidity, including displayed and non-displayed orders, in Nasdaq Securities with a trading price of at least $1.00 per share. When adding liquidity in Nasdaq Securities with a trading price below $1.00, the Exchange is proposing to not pay any credit; Floor brokers, however, would be paid a credit of .10% of the total dollar value of the transaction.

Floor broker agency cross trades (*i.e.* a trade where a member has customer orders to buy and sell an equivalent amount of the same security) and agency transactions between Floor brokers in the Crowd will not be charged any fees.

iv. DMM Credits

Because DMMs have special obligations as market makers, the Exchange proposes different credits for DMM transactions in Nasdaq Securities.[5] For DMM transactions adding liquidity in Nasdaq Securities with a price of at least $1.00 per share, the Exchange proposes to pay a credit of $0.0021 per share. For DMM transactions adding liquidity in Nasdaq Securities with a trading price below $1.00, the Exchange proposes to pay a credit of .20% of the total dollar value of the transaction.

v. SLP Credits

The Exchange proposes different credits for SLP transactions in Nasdaq Securities contingent upon SLPs meeting their quoting requirements in

[3] *See* Securities Exchange Act Release No. 61890 (April 12, 2010), 75 FR 20401 (April 19, 2010) (SR–NYSEAmex–2010–31).

[4] As with its listed securities, the Exchange proposes different credits for DMMs and SLPs trading Nasdaq Securities.

[5] Text in this sentence as set forth in the Exchange's Form 19b–4 and Exhibit 1 thereto has been deleted at the request of the Exchange. *See* e-mail from Jason Harman, Consultant, NYSE Amex, to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated July 12, 2010.

accordance with Rule 107B—NYSE Amex Equities.[6] For SLP transactions adding liquidity in Nasdaq Securities with a price of at least $1.00 per share, the Exchange proposes to pay a credit of $0.0021 per share if the SLP meets its quoting requirements and $0.0019 per share if the SLP does not meet its quoting requirements. For SLP transactions adding liquidity in Nasdaq Securities with a trading price below $1.00, the Exchange is proposing to not pay any credit regardless of whether or not the SLP meets its quoting requirements.

vi. Odd-Lot Transactions

The Exchange proposes that the fees for odd-lot transactions in Nasdaq Securities are as follows: $0.0021 per share for stocks priced above $1.00, and 0.20% of the total dollar value of the transaction for stocks priced below $1.00. The Exchange further proposes that DMMs receive a credit for adding liquidity in odd-lots, including the odd-lot portions of partial round-lots, of $0.0011 per share, regardless of price.[7]

c. Proposed Fee for Transactions in Crossing Session II

Currently, there is no charge for executions of basket trades in Crossing Session II. The Exchange proposes to implement a fee of $0.0001 per share charged to both sides of a basket trade executed in Crossing Session II. This fee would apply to executions involving both listed and traded securities, including Nasdaq Securities. The fee would be subject to a $50,000 cap per month per member organization for (i) NYSE Amex Equities listed securities, and separately (ii) NYSE Amex traded securities.

Finally, the Exchange proposes that the fees and credits described herein be made effective as of the same date the Exchange's pilot program for trading Nasdaq Securities is made effective.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the provisions of Section 6[8] of the Act,[9] in general, and Section 6(b)(4),[10] in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees or other charges, as all similarly situated Exchange participants will be subject to the same fee structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEAmex–2010–69 and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17491 Filed 7–16–10; 8:45 am]

BILLING CODE 8011–01–P

[6] Text in this sentence as set forth in the Exchange's Form 19b–4 and Exhibit 1 thereto has been deleted at the request of the Exchange. *See id.*

[7] The Exchange has filed and expects to receive approval of a rule filing to incorporate the receipt and execution of odd-lot interest into the round lot market and to decommission the use of the odd-lot system ("trading-in-shares"). *See* Securities Exchange Act Release No. 62169 (May 25, 2010), 75 FR 31494 (June 3, 2010) (SR–NYSEAmex–2010–43). Nasdaq Securities will trade in accordance with these rule changes and the pricing for odd-lots will be the same as for round-lots once they are approved.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78a, *et seq.*

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62485; File No. SR–NYSEArca–2010–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Establish Trading Collars for Market Orders

July 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 9, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31 to add trading collars for market orders at the Exchange. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 7.31(a), governing Market Orders, to add trading collars that would prevent a market order from trading more than a certain percentage away from a calculated reference price that would be continuously updated based on market activity. The proposed trading collars are distinct from the five-minute trading pauses pursuant to NYSE Arca Equities Rule 7.11 that, as a consequence of recent extreme market volatility, will now be issued by listing markets if the transaction price of a security moves ten percent or more from a price in the preceding five-minute period. The Exchange believes that the proposed trading collars will serve as an additional safeguard that could help limit potential harm from extreme price volatility such as that recently experienced on May 6, 2010 by preventing executions that occur a specified percentage away from the last sale in the first place.

Under the proposed rule change, during Core Trading Hours, a market order to buy (sell) will not execute or route to another market center at a price above (below) the Trading Collar. As proposed, Trading Collars will apply only to market orders and not limit orders.

As proposed, the Trading Collar will be based on a price that is a specified percentage away from the consolidated last sale price, which can be a price either reported on the Consolidated Tape or the UTP Trade Data Feed, depending on which market the security is listed. The upper boundary of the Trading Collar will be calculated by increasing the consolidated last sale price by a specific percentage, and the lower boundary will be calculated by decreasing the consolidated last sale price by the same specified percentage.

The numerical percentage proposed to be used in the Trading Collar price calculations will be equal to the appropriate "numerical guideline" percentage set forth in paragraph (c)(1) of NYSE Arca Equity Rule 7.10 (Clearly Erroneous Executions) for the Core Trading Session, as applied to the Consolidated Last Sale Price. The current values of those percentages for various price ranges are indicated in the following table, but the percentages for Trading Collars will automatically be adjusted to match any future changes in the numerical guidelines in NYSE Arca Equity Rule 7.10. The Exchange notes that leveraged ETF/ETN securities will follow the 10%, 5%, and 3% percentage guidelines below, and will not be multiplied by a leverage multiplier, as provided for in NYSE Arca Equity Rule 7.10 for leveraged ETF/ETN securities.

Consolidated last sale price	Collar price percentage deviation
$25.00 or less	10
Above $25.00 to (and including) $50.00	5
Above $50.00	3

The Exchange believes that the numerical guidelines applicable for clearly erroneous executions provide an appropriate threshold for determining whether to trigger a Trading Collar. These numerical guidelines have already been vetted through the notice and comment process as appropriate thresholds for when an execution may be found to be clearly erroneous. As proposed, because the Trading Collar will be based on an execution that is outside of a price that is already established as appropriate for being considered an erroneous execution, the Trading Collar will provide for a mechanism to prevent such clearly erroneous executions in the first instance.

Collar prices will be continuously calculated and published for all securities traded on the Exchange regardless of listing market. A trading halt in a security will zero out the collar values, and calculations will restart with the first print after trading resumes.

Market orders will interact with the Trading Collars on a given equity security in the following manner. A market order to sell will not execute at a price below the bottom Trading Collar price, but will execute at prices equal to or above it, including prices displayed by other automated markets that involve the routing of volume from the order to the other markets. Similarly, a market order to buy will not execute at a price above the top Trading Collar price but will execute at prices equal to or below it, including prices displayed by other automated markets that involve the routing of volume from the order to the other markets.

Exchange systems will hold market orders, or portions thereof, that become restricted by the Trading Collar (unless marked immediate-or-cancel) until (i) additional opportunities for execution consistent with the Trading Collar become available, either on the Exchange or on other markets, or (ii) a new Trading Collar is calculated based on a new consolidated last sale price, and the remaining portion of the order is then able to execute at prices consistent with the new Trading Collar. If there are multiple market orders that become restricted by the collar price, they will be ranked in time priority.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

The following example illustrates the operation of the Trading Collar:

Consolidated last sale price of XYZ Corp. is 40.00.

Bottom Trading Collar price is 38.00 (5% below 40.00).

Market Evaluation (Buy Orders):
NYSE Arca 2000 shares at 39.00.
NYSE Arca 2000 shares at 38.60.
NYSE Arca 1000 shares at 38.40.
BATS 1000 shares at 38.20.
NYSE Arca 1000 shares at 38.00.
NYSE Arca 2000 shares at 37.50.
NYSE Arca 1000 shares at 37.00.

Assume arrival of an order to Sell 10,000 shares at Market.

Results:

- 2000 shares execute on NYSE Arca at 39.00.
- 2000 shares execute on NYSE Arca at 38.60.
- 1000 shares execute on NYSE Arca at 38.40.
- 1000 shares routed to BATS and execute there at 38.20.
- 1000 shares execute on NYSE Arca at 38.00.

The Sell Order is then restricted by the bottom Trading Collar and cannot execute below 38.00.

Next, assume the first trade above at 39.00 is printed to the tape and becomes the new consolidated last sale price. Bottom collar price is now 37.05 (5% below 39.00).

Results:

- 2000 shares execute on NYSE Arca at 37.50.

The Sell Order is then restricted by the new bottom Trading Collar and cannot execute below 37.05.

Next, assume the second trade above at 38.60 is printed to the tape and becomes the new consolidated last sale price. Bottom collar price is now 36.67 (5% below 38.60).

Results:

- 1000 shares execute on NYSE Arca at 37.00, completing the order.

The Trading Collar for the security will continue to adjust as each of the remaining executions above (as well as any executions in the security on other markets) is printed to the tape and becomes the new consolidated last sale price.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[3] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[4] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it ensures that market orders will not cause the price of a security to move beyond prices that could otherwise be determined to be a clearly erroneous execution, thereby protecting investors from receiving executions away from the prevailing prices at any given time.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to implement immediately a measure designed to reduce market volatility, and because the proposal is generally consistent with the rules of other exchanges.[7] Therefore, the Commission designates the proposed rule change as operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78k–1(a)(1).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement.

[7] *See* BATS Rule 11.9(a)(2) and NYSE Arca Equities Rule 7.10.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–67 and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17490 Filed 7–16–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62490; File No. SR–NASDAQ–2010–078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Modify Rule 7019 Governing Market Data Distribution Fees

July 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 13, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Rule 7019 governing market data distribution fees to harmonize distributor and direct access fees for depth products.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

7019. Market Data Distributor Fees

(a) No change.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly direct access fee	Monthly internal distributor fee	Monthly external distributor fee
Issue Specific Data			
Dynamic Intraday			
NASDAQ-listed security depth entitlements [TotalView]	$2,000	$1,000	$2,500
Non NASDAQ-listed security depth entitlements [OpenView]	1,000	500	1,250

(c)–(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify Rule 7019 governing market data distribution fees to harmonize the depth distributor fees by including Level 2, also known as NQDS, into the current fee (TotalView) for Nasdaq-listed securities. Currently, the data feed that contains the Nasdaq Level 2 entitlement and OpenView entitlement includes distributor fees for non-Nasdaq listed securities (under the OpenView entitlement) but does not include distributor fees for Nasdaq listed securities as TotalView does. Harmonization of the depth distributor fee entitlement for Nasdaq-listed securities on the Level 2 data product, consistent with other Nasdaq depth products such as TotalView, ensures product and policy consistency. As mentioned above, the Nasdaq Level 2 data feed contains two different entitlements (the OpenView entitlement and Level 2 entitlement). The data feed is the physical stream of data, whereas the entitlement is the subscription for which customers sign-up.

The Nasdaq Level 2 entitlement was created in 1983 at a time that all real-time products fell under the auspices of the UTP Plan. Subsequently, Nasdaq created a separate security information processor for UTP data in 2002 and petitioned the SEC to remove the Level 2 entitlement from the UTP Plan. When Nasdaq received exchange status in 2006, Level 2 data was removed from the UTP plan. Currently, the Level 2 data feed carries top-of-file exchange participant quotations for both Nasdaq and Consolidated Quotation System issues. This information is also carried in TotalView along with the full participant quotes. As such, Level 2 is a subset of TotalView data.

Like Nasdaq's other products, the Level 2 data feed is fed directly by the Nasdaq execution system and is offered in a full range of network protocols just as with TotalView. Meaning the Nasdaq Level 2 data feed uses the same system infrastructure as TotalView and as such, the entitlement for the distributor fees should be the same.

In addition to the new distributor fees, Nasdaq is looking to expand the direct access fee to customers who subscribe to the Level 2 entitlement. As with the disparity in the TotalView distributor fee, customers who only access the Level 2 information through the Level 2 entitlement directly from the Exchange are not charged a direct access fee (as "Direct Access" is defined in Nasdaq Rule 7019). Nasdaq is seeking to remedy this so that these customers are

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

charged the same direct access fee as are customers of TotalView and OpenView. It is important to note that customers will only be charged one direct access fee for Nasdaq listed securities and one direct access fee for non-Nasdaq listed securities mimicking the TotalView and OpenView direct access entitlements.

The Exchange believes that the harmonization of the distributor fee and direct access fee makes Nasdaq's depth distributor fees and direct access fees consistent across products and allows Nasdaq to assess a fair price for the value delivered among all of Nasdaq's depth products. Firms would only pay one distributor fee and one direct access fee for a non-Nasdaq listed securities entitlement, regardless of the number of feeds consumed. Additionally, Firms would only pay one distributor fee and one direct access fee for a Nasdaq listed securities entitlement, regardless of the number of feeds consumed. This proposed rule change also has no affect on professional and non-professional user fees as this change is designed for the harmonization of distributor and direct access fees only.

If the Commission approves the filing in August 2010 but after August 1, 2010, the distributor fees as set forth herein will be in effect and cover the full month and will not be prorated.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(4) of the Act,[5] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed rule change in this instance appears to be precisely the sort of rule change that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether, proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As the Commission has recognized,[7] the market for transaction execution and routing services is highly competitive, and the market for proprietary data products is complementary to it, since the ultimate goal of such products is to attract further order flow to an exchange. Thus, exchanges lack the ability to set fees for executions or data at inappropriately high levels. Order flow is immediately transportable to other venues in response to differences in cost or value. Similarly, if data fees are set at inappropriate levels, customers that control order flow will not make use of the data and will be more inclined to send order flow to exchanges providing data at fees they consider more reasonable.

The market for market data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

With regard to the market for executions, broker-dealers currently have numerous alternative venues for their order flow, including multiple competing self-regulatory organization ("SRO") markets, as well as broker-dealers ("BDs") and aggregators such as the Direct Edge and LavaFlow electronic communications network ("ECN"). Each SRO market competes to produce transaction reports via trade executions, and FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, Alternext, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Nasdaq and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including "Project BOAT," a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for market data products, Nasdaq considered the competitiveness of the market for market data and all of the implications of that competition. Nasdaq believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–078 and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17493 Filed 7–16–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62491; File No. SR–NASDAQ–2010–086]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Application of NASDAQ Rule 4611(d)

July 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to delay the application of NASDAQ Rule 4611(d) for an additional 180 days. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2010, the Commission approved SR–NASDAQ–2008–104 which established new standards for sponsored access as set forth in NASDAQ Rule 4611(d), NASDAQ's Market Access Rule.[4] On March 17, 2010, NASDAQ proposed to delay implementation of the Market Access Rule, based upon conversations with industry participants.[5] NASDAQ believes that market participants need additional time to implement the Market Access Rule. Accordingly, NASDAQ is proposing to delay for an additional 180 days the implementation of new NASDAQ Rule 4611(d).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal is consistent with these obligations because market participants require additional time to comply with the new market access provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–086, and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17494 Filed 7–16–10; 8:45 am]

BILLING CODE 8011–01–P

[4] Securities Exchange Act Release No. 61345 (Jan. 13, 2010) ("NASDAQ Market Access Approval Order").

[5] Securities Exchange Act Release No. 61770 (Mar. 24, 2010) (SR–NASDAQ–2010–039).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0043]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Upcoming Quarterly Panel Meeting.

DATES: September 1, 2010, 8:30 p.m.–5 p.m. (EST); September 2, 2010, 8:30 a.m.–11:30 a.m. (EST).

Location: Boston Park Plaza Hotel & Towers.

ADDRESSES: 50 Park Plaza at Arlington Street, Boston, MA 02116, (617) 426–2000.

By Teleconference: (866) 871–4318.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will advise the Agency on the creation of an occupational information system tailored specifically for the Social Security Administration's (SSA) disability determination process and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Wednesday, September 1, 2010, from 8:30 a.m. until 5 p.m. (EST) and Thursday, September 2, 2010, from 8:30 a.m. until 11:30 a.m. (EST).

The tentative agenda for this meeting includes: a presentation on the status of the SSA FY 2010 Occupational Information System Development (OID) project activities and the proposed integration with Panel milestones; subcommittee chair reports; individual and organizational public comment; presentations on several OID research projects currently underway; Panel discussion and deliberation; and, an administrative business meeting. SSA will post the final agenda on the Internet one week prior to the meeting at *http://www.socialsecurity.gov/oidap.*

The Panel will hear public comment during the Quarterly Meeting on Wednesday, September 1, from 1 p.m. to 2 p.m. (EST) and Thursday, September 2, from 10 a.m. to 10:30 a.m. (EST). Members of the public must reserve a time slot—assigned on a first come, first served basis—in order to comment. In the event that scheduled public comment does not take the entire time allotted, the Panel may use any remaining time to deliberate or conduct other business.

Those interested in providing testimony in person at the meeting or via teleconference should contact the Panel staff by e-mail to *OIDAP@ssa.gov.* Individuals providing testimony are limited to a maximum five minutes; organizational representatives, a maximum of ten minutes. You may submit written testimony, no longer than five (5) pages, at any time in person or by mail, fax or e-mail to *OIDAP@ssa.gov* for Panel consideration.

Seating is limited. Those needing special accommodation in order to attend or participate in the meeting (*e.g.,* sign language interpretation, assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than August 20, 2010. We will attempt to accommodate requests made but cannot guarantee availability of services. All meeting locations are barrier free.

For telephone access to the meeting on September 1 and 2, please dial toll-free to (866) 871–4318.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Fax: 410–597–0825. E-mail to: *OIDAP@ssa.gov.* For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap.*

Deborah A. Tidwell,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2010–17488 Filed 7–16–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Airline Service Quality Performance—Part 234

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for re-instatement of an expired collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 16, 2010 (75 FR 21716).

DATES: Written comments should be submitted by August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

SUPPLEMENTAL INFORMATION:

OMB Approval No. 2138–0041

Title: Airline Service Quality Performance—Part 234.

Form No.: BTS Form 234.

Type Of Review: Re-instatement of an expired collection.

Respondents: Large certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues.

Number of Respondents: 18.

Total Number of Annual Responses: 216.

Estimated Time per Response: 20 hours.

Total Annual Burden: 4320 hours.

Needs and Uses

Consumer Information

Part 234 gives air travelers information concerning their chances of on-time flights and the rate of mishandled baggage by the 18 largest scheduled domestic passenger carriers.

Reducing and Identifying Traffic Delays

The Federal Aviation Administration uses part 234 data to pinpoint and analyze air traffic delays. Wheels-up and wheels-down times are used in conjunction with departure and arrival times to show the extent of ground delays. Actual elapsed flight time, wheels-down minus wheels-up time, is compared to scheduled elapsed flight time to identify airborne delays. The reporting of aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels. The identification of the reason for delays allows the FAA, airport operators, and air carriers to pinpoint delays under their control.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2010–17511 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for re-instatement of an expired collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 16, 2010 (75 FR 21717).

DATES: Written comments should be submitted by August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E-mail *bernard.stankus@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, *Attention:* RITA/BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0018

Title: Report of passengers Denied Confirmed Space.

Form No.: Form 251.

Type Of Review: Re-instatement of an expired collection.

Respondents: Large certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues.

Number of Respondents: 18.

Total Number of Annual Responses: 72.

Estimated Time per Response: 90 hours.

Total Annual Burden: 960.

Needs and Uses: BTS Form 251 is a one-page report on the number of passengers denied seats either voluntarily or involuntarily, whether these bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. air carriers that account for at least 1 percent of domestic scheduled passenger service must report all operations with 30 seat or larger aircraft that depart a U.S. airport. Carriers do not report data from inbound international flights because the protections of 14 CFR Part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. While the involuntarily denied-boarding rate has decreased from 4.38 per 10,000 passengers in 1980 to 1.09 for the quarter ended December 2009, the rate is up from the 0.89 attained for the nine month period that ended on September 30, 2005. The publishing of the carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service practices. A rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with lower incidences of bumping passengers. This information is available in the *Air Travel Consumer Report* at: *http://airconsumer.ost.dot.gov/reports/index.htm.* The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2010–17517 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1061X]

Central Washington Railroad Company—Discontinuance of Trackage Rights Exemption—in Yakima County, WA

Central Washington Railroad Company (CWRR) [1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue trackage rights over 2.25 miles of rail lines owned by Union Pacific Railroad Company (UP), consisting of 1.45 miles between UP milepost 57.3 and UP milepost 58.75 in Grandview, Wash., and 0.8 miles between UP milepost 62.75 and UP milepost 63.55 at Midvale, Wash.[2] The lines traverse United States Postal Service Zip Code 98930.

CWRR has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) no overhead traffic has moved over the lines for at least 2 years; (3) no formal complaint filed by a user of rail service on the lines (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 18, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by July 29, 2010.[4] Petitions to reopen must be filed by August 9, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CWRR's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 14, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–17496 Filed 7–16–10; 8:45 am]

BILLING CODE 4915–01–P

[1] CWRR acquired the trackage rights in *Central Washington Railroad Company—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company,* FD 34640 (STB served Jan. 21, 2005).

[2] UP was authorized to abandon the 1.45-mile line of railroad in *Union Pacific Railroad Company—Abandonment Exemption—in Yakima County, Wash.,* AB 33 (Sub-No. 285X) (STB served June 22, 2010), and the 0.8-mile line of railroad in *Union Pacific Railroad Company—Abandonment Exemption—in Yakima County, Wash.,* AB 33 (Sub-No. 286X) (STB served June 22, 2010). In each notice, UP was advised it could not consummate the abandonment while existing trackage rights remained in effect.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Fort Smith Regional Airport, Fort Smith, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Fort Smith Regional Airport under the provisions of Title 49, U.S.C. Section 47153(c).

DATES: Comments must be received on or before August 18, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FM must be mailed or delivered to Mr. John Parker, Airport Director, Fort Smith Regional Airport, at the following address: Fort Smith Regional Airport, 6700 McKennon Blvd., Suite 200, Fort Smith, AR 72903.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Pierre, Federal Aviation Administration, Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Fort Smith Regional Airport.

On June 24, 2010, the FAA determined that the request to release property at Fort Smith Regional Airport submitted by the City of Fort Smith met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than August 1, 2010.

The following is a brief overview of the request:

The Fort Smith Regional Airport requests the release of 2.11 acres of airport property. The release of property will allow the Arkansas Highway Department to make improvements to Highway 255 and Century Drive. The release will also allow the airport to receive, in exchange for the 2.11 acres, a cash payment in the amount of $257,400.00, which the Airport will use toward AlP eligible taxiway improvements in the general aviation area at Fort Smith Regional Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fort Smith Regional Airport.

Issued in Fort Worth, Texas, on June 24, 2010.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 2010–17292 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0089]

Public Meeting on Draft Recommendations for Safely Transporting Children in Specific Situations in Emergency Ground Ambulances

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Public Meeting.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will hold a Public Meeting to obtain comments on the attached Draft Recommendations for Safely Transporting Children in Specific Situations in Emergency Ground Ambulances. These recommendations were developed by a Working Group comprised of subject matter experts to provide guidance to local, State, and national emergency medical services (EMS) personnel and organizations to safely transport children from the scene of a crash or other incident in ground ambulances.

DATES: The Public Meeting will be held on August 5, 2010 from 1:30–4:30 p.m. EST.

ADDRESSES: *Location of meeting:* Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. NHTSA recommends that all persons attending the Public Meeting arrive at least 45 minutes early in order to facilitate entry into the DOT building. If you wish to attend or speak at the Public Meeting on August 5, 2010, you must register by 5 p.m. ET on July 26, 2010 by following the instructions in the *Procedural Matters* section of this Notice. NHTSA will consider late registrants to the extent time and space allows, but NHTSA cannot ensure that late registrants will be able to speak at the meeting.

If you are unable to attend the Public Meeting in person in Washington, DC, NHTSA will also conduct a live, Internet-based "Webinar" of the meeting on August 5, 2010. For those interested in registering to participate in the Webinar, please send an e-mail message indicating this to *sandy.sinclair@dot.gov* by no later than 5 p.m. ET, on July 26, 2010 with "Webinar Attendance" in the e-mail "Subject" line.

Instructions for written comments: If you are interested in submitting written comments on the draft recommendations, you may submit comments identified by DOT Docket ID Number NHTSA–2010–0089 by July 26, 2010 using one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Please Note: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the information provided under "Privacy Act."

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Sinclair, Telephone: 202–366–2723, Occupant Protection Division (NTI–112), Office of Impaired Driving and Occupant Protection, Research and Program Development, Traffic Injury Control, NHTSA, DOT, 1200 New Jersey Avenue, SE., Washington, DC 20590. *E-mail: sandy.sinclair@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Estimates suggest that ground emergency medical services (EMS) responds to approximately 30 million emergency calls each year.[1] Approximately 6.2 million patient transport ambulance trips occur annually,[2] of which approximately 10 percent of those patients are children.[3] While data sources regarding ambulance crashes involving child ambulance occupants in the U.S. are limited, it is estimated that each year up to 1,000 ambulance crashes involve patients who are children. A review of local, national, and international media coverage of ambulance crashes involving injuries to children of all ages suggests such crashes are dangerous and can result in injuries ranging from minor to fatal. Injured children may be patients or passengers accompanying a parent or caregiver; they may be receiving transport from the scene of a crash or a medical emergency, or may be involved in an inter-facility transport.

The issue of variation in emergency child transport guidelines was first identified in a 1998 publication which reported the results of a survey examining State requirements regarding the use of safety restraints for children in ambulances. The study revealed that 35 States did not require patients of any age to be restrained in ambulances. Of those States requiring the use of child safety restraints, requirements varied between requiring that the child be placed in a child restraint system on an ambulance cot, in a child seat, or both.[4] Depending upon the medical condition of the child (*e.g.,* uninjured/not ill, and being transported with an injured parent or caregiver; injured/or ill but not requiring continuous and/or intensive medical monitoring; or injured/ill and requiring continuous and/or intensive medical monitoring), these three methods of transporting children in ground ambulances may not be the safest means of doing so.

The Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) and the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation convened a national consensus committee in 1999 to review EMS child transportation safety practices following the 1998 publication of the State survey and to develop guidelines for safely transporting children in ground ambulances. The HRSA/NHTSA committee, composed of

[1] Levick, NR. Emergency Medical Services: A Transportation Safety Emergency. Paper presented at: American Society of Safety Engineers Professional Development Conference; June 24–27, 2007; Orlando, Florida, USA. Available at: *http://www.objectivesafety.net/2007ASSE628Levick.pdf.* Accessed December 9, 2008.

[2] Levick, NR. 2002. New Frontiers in optimizing ambulance transport safety and crashworthiness. *The Paramedic.* 2002;4:36–39.

[3] Winters, G and Brazelton, T. Safe Transport of Children. *EMS Professionals.* July-August 2003;13–21.

[4] Seidel J.S., Greenlaw J. Use of restraints in ambulances: A state survey. *Pediatric Emergency Care.* 1998;14(3):221–3.

representatives from national EMS organizations, Federal agencies, and transportation safety engineers, developed a document entitled, *The Do's and Dont's of Transporting Children in an Ambulance,* which was published in December 1999.[5] This document provides general guidance for EMS practitioners in the field on how to transport children safely in an ambulance.

Since the publication of *The Do's and Don'ts of Transporting Children in an Ambulance,* protocols and practices currently utilized by EMS practitioners have remained inconsistent. States, localities, associations and EMS providers have developed legislation, guidelines or protocols regarding this issue. However, these guidelines and protocols vary across jurisdictions and often provide limited, or in some cases inappropriate, guidance.

Currently, there are no Federal standards or standard protocols among EMS and child passenger safety professionals in the U.S. for how best to transport children safely in ground ambulances from the scene of a traffic crash or medical emergency to a hospital or other facility. The absence of consistent national standards and protocols regarding the transportation of children in ground ambulances complicates the work of EMS professionals and may result in the improper and unsafe restraint of highly vulnerable child passengers. As a result, EMS agencies, advocates and academicians have turned to NHTSA for leadership on this issue.

II. Draft Recommendations

To address this issue, NHTSA initiated "Solutions to Safely Transport Children in Emergency Vehicles" in September 2008.[5] The major objectives of the project were to: (1) Build consensus in the development of a uniform set of recommendations to safely and appropriately transport children (injured, ill, or not sick/uninjured) from the scene of a crash or other incident in a ground ambulances; (2) foster the creation of best practice recommendations after reviewing the practices currently being used to transport children in ground ambulances; and (3) provide consistent national recommendations that will be embraced by local, State and national EMS organizations, enabling them to reduce the frequency of inappropriate and potentially unsafe transportation of ill, injured or not sick/uninjured children in ground ambulances.

To achieve the objectives described above, NHTSA formed a Working Group of experts with the experience, background, and knowledge of the current practices for the emergency transportation of child passengers in ground ambulances. The members of the Working Group were drawn from many prominent national organizations and entities involved in the health care of children and the transportation of children and others in ground ambulances, including the International Association of Firefighters, the National Association of State EMS Officials, the American Academy of Pediatrics, the American College of Emergency Physicians (ACEP), the National Association of Emergency Medical Service Physicians (NAEMSP), the National Volunteer Fire Council, the National Association of Emergency Medical Technicians, the American Ambulance Association, the National Emergency Medical Services for Children's Resource Center (EMSC NRC), and the Emergency Nurses Association (ENA). Members from NHTSA, HRSA and other entities within HHS also participated in the discussions and deliberations of the Working Group. The Working Group met monthly via teleconference beginning in 2009 to develop the draft recommendations for the safe transportation of children in ground ambulances. In addition to holding the monthly teleconferences, the Working Group was also convened for a one-day meeting in Washington, DC on July 22, 2009.

The ultimate goals of the draft recommendations developed by the Working Group are to: (1) Prevent forward motion/ejection of all children being transported in ground ambulances; (2) secure the torso ejection of all children being transported in ground ambulances; and (3) protect the head, neck and spine of all children transported in ground ambulances. By ensuring that these goals are met in all situations involving the transportation of children in ground ambulances from the scene of a traffic crash or medical emergency, the Working Group believes that the safety of such children will be greatly improved.

The draft recommendations for the safe transportation of children in emergency ground ambulances are organized into five categories reflecting common situations:

1. Child who is uninjured/not ill;
2. Child who is ill and/or injured and whose condition *does not require* continuous and/or intensive medical monitoring and/or interventions;
3. Child whose condition *requires* continuous and/or intensive medical monitoring and/or interventions;
4. Child whose condition *requires* spinal immobilization and/or lying flat; and
5. Child or children who *require* transport as part of a multiple patient transport (newborn with Mother, multiple children, etc.).

The full text of the recommendations and the draft report will be placed in the Docket.

III. Participation in the Public Meeting

The Public Meeting will be open to the public with advance registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation (if any), telephone number and e-mail address to Mr. Alexander Sinclair using the contact information in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice no later than July 26, 2010. Should it be necessary to cancel the Public Meeting due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by e-mail or telephone.

The Public Meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Mr. Alexander Sinclair using the contact information in the **FOR FURTHER INFORMATION CONTACT** section no later than July 26, 2010. Any written materials NHTSA presents at the Public Meeting will be available electronically on the day of the Public Meeting to accommodate the needs of the visually impaired.

Once NHTSA learns how many people have registered to speak at the Public Meeting, NHTSA will allocate an appropriate amount of time to each participant, allowing time for necessary breaks during the time allotted for the meeting. [**Please note:** NHTSA anticipates the Working Group will present some of the recommendations and respond to technical questions during the Public meeting.]

For planning purposes, each speaker should anticipate speaking for no more than approximately ten (10) minutes, although NHTSA may need to adjust the time for each speaker depending upon the total number of speakers. To accommodate as many speakers as

[5] Health Resources and Services Administration (HRSA) and National Highway Traffic Safety Administration (NHTSA). The Dos and Don'ts of Transporting Children in an Ambulance. December 1999. Available at: *www.dhhs.state.nc.us/dhsr/EMS/pdf/nhtsa__childtransport.pdf.* Accessed January 21, 2009.

[5] Operational support for the project was provided by Maryn Consulting Inc. under NHTSA contract DTNH22–08–C00085 by Maryn Consulting, Inc.

possible, NHTSA prefers that speakers not use technological aids (e.g. audio-visuals, computer presentations, etc.). However, if you plan to do so, you must contact Mr. Sinclair by July 26, 2010 using the contact information in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Speakers must also make arrangements to provide their presentations to NHTSA in advance of the Public Meeting to facilitate set up. During the week of August 2, 2010, NHTSA will post information on its Web site at *http://www.nhtsa.gov* indicating the amount of time allocated for each speaker and each speaker's approximate order on the agenda for the Public Meeting.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

Draft Recommendations for Safely Transporting Children in Specific Situations in Emergency Ground Ambulances

Situation 1
For a Child who is uninjured/not ill [6]

The Ideal	Transport using a size-appropriate child restraint system that complies with FMVSS 213 in a vehicle other than a ground ambulance.
If the Ideal is not Practical or Achievable.	1. Transport in a size-appropriate child restraint system that complies with FMVSS 213 appropriately installed in the front passenger seat (with air bags off) of the emergency ground ambulance; or 2. Transport in the forward-facing EMS provider's seat (currently rare in the industry) in a size-appropriate child restraint system that complies with FMVSS 213 inside ambulance; [7] or 3. Transport in the rear-facing EMS provider's seat in a size-appropriate child restraint system that complies with FMVSS 213 (convertible or combination seat but not infant only seat, using a forward facing belt path) or in an integrated child restraint system seat (certified by manufacturer) to meet the injury criteria FMVSS 213; or 4. Consider delay [8] of transport of the child with appropriate adult supervision until additional vehicles are available (patient is transported in EMS vehicle separately); or 5. Per the judgment of EMS personnel on the scene (and in consultation with medical control, when possible), consider delay of transport (to the extent the patient's safety and medical condition are not in any way compromised), patient care continued on scene (monitoring) until an additional vehicle is available for transport.

Situation 2
For a Child who is ill and/or injured and whose condition does not require continuous and/or intensive medical monitoring and/or interventions [9]

The Ideal	Transport child in a size-appropriate child restraint system that complies with the injury criteria of FMVSS 213—secured appropriately on cot.[10]
If the Ideal is not Practical or Achievable.	1. Transport child in the EMS provider's seat in a size-appropriate child restraint system that complies with the injury criteria of FMVSS 213 or an integrated seat in the EMS provider's seat that is certified by the manufacturer to meet the injury criteria of FMVSS 213; or 2. Transport child on cot [11] using three horizontal restraints across the child's torso (chest, waist, and knees) and one vertical restraint across each of the child's shoulders.

Situation 3
For a Child whose condition requires continuous and/or intensive medical monitoring and/or interventions [12]

The Ideal	Transport child in a size-appropriate child restraint system that complies with the injury criteria of FMVSS 213—secured appropriately on cot.[13]
If the Ideal is not Practical or Achievable.	Secure the child to the cot [14]; head first, with three horizontal restraints across the torso (chest, waist, and knees) and one vertical restraint across each shoulder. If the child's condition requires medical interventions, which requires the removal of some restraints, the restraints should be re-secured as quickly as possible as soon as the interventions are completed and it is medically feasible to do so. In the best interest of the child and the EMS personnel, the vehicle operator is urged to consider stopping the ambulance during the interventions. If spinal immobilization of the child is required, please follow the recommendation in the following table.

Situation 4
For a Child whose condition requires spinal immobilization and/or lying flat [15]

The Ideal	Secure the child to a size-appropriate spineboard and secure the spineboard to the cot,[16] head first, with a tether at the foot (if possible) to prevent forward movement. Secure the spineboard to the cot [17] with three horizontal restraints across the torso (chest, waist, and knees) and a vertical restraint across each shoulder.
If the Ideal is not Practical or Achievable.	Secure the child to a standard spineboard with padding added, as needed, (to make the device fit the child) and secure the spineboard to the cot,[18] head first, with a tether at the foot (if possible) to prevent forward movement. Secure the spineboard to the cot [19] with three horizontal restraints across the torso (chest, waist, and knees) and a vertical restraint across each shoulder.

Situation 5
For a Child or Children requiring transport as part of a multiple patient transport (newborn with Mother, multiple children, etc.) [20]

The Ideal	If possible, for multiple patients, transport each as a single patient according to the guidance shown for Scenarios 1 through 4.

DRAFT RECOMMENDATIONS FOR SAFELY TRANSPORTING CHILDREN IN SPECIFIC SITUATIONS IN EMERGENCY GROUND AMBULANCES—Continued

If the Ideal is not Practical or Achievable.	For mother and newborn, transport the newborn in an approved size-appropriate child restraint system that complies with the injury criteria of FMVSS 213 in the rear facing EMS provider seat with a forward-facing belt path that prevents both lateral and forward movement (convertible or integrated child restraint system and not an infant only seat), leaving the cot[21] for the mother. When available resources prevent meeting the criteria shown for situations 1 through 4 for all child patients, including mother and newborn, transport using space available in a non-emergency mode, exercising extreme caution and driving at reduced (i.e., below legal maximum) speeds. If additional units may be needed based upon preliminary reports, backup units should be put on standby.

Prepared under NHTSA Contract DTNH22–08–C00085, EMS Solutions for Safely Transporting Children in Emergency Vehicles, with Maryn Consulting, Inc.

[6] Please consult Appendix C, General Considerations and Selecting Child Restraint Systems for Ground Ambulance Transport, for guidance on how to select equipment that may be used to meet the requirements of each of the recommendations. EMS providers are encouraged to check with equipment manufacturers for detailed information on the proper use and installation, results of crash testing, and possible limitations of any equipment that may be considered for use to fulfill the recommendations for the safe transportation of children in emergency ground ambulances.

[7] There may be considerations of adding specific conditions for this use, e.g., crash tested seat meeting FMVSS 213 and adequate space in front of the seat.

[8] The Working Group recommends that all EMS agencies plan, in advance, with other public health, public safety, and other partners for those situations where uninjured or not ill infants and children may be on the scene—as primary patients or not—so such events can be successfully mitigated and the uninjured infants and children can be transported as safely and as quickly as possible.

[9] *See* Footnote 1.

[10] [11] All children transported on a cot shall be restrained to the cot with the 5-point cot restraint system that includes three horizontal restraints across the torso (chest, waist, and knees) and one vertical restraint across each shoulder.

[12] *See* Footnote 1.

[13] *See* Footnotes 5 and 6.

[14] Ibid.

[15] *See* Footnote 1.

[16] *See* Footnotes 5 and 6.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] The Working Group recommends that all EMS systems "pre-plan", i.e., plan in advance for those situations where multiple infants and children may be on the scene—as primary patients or not—so such events can be successfully mitigated. Pre-planning for such events must also involve other public health, public safety and other partners to be most successful. An example of such an event is one that involves multiple patients, i.e., infants and/or children who need to be transported (to include labor with the mother and one or more newborns).

[21] All children transported on a cot shall be restrained to the cot with the 5-point cot restraint system that includes three horizontal restraints across the torso (chest, waist, and knees) and one vertical restraint across each shoulder.

[FR Doc. 2010–17513 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice New Smyrna Beach Municipal Airport, New Smyrna Beach, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the City of New Smyrna Beach for New Smyrna Beach Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is July 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, 407–812–6331.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for New Smyrna Beach Municipal Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective July 8, 2010. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by the City of New Smyrna Beach. The documentation that constitutes the "Noise Exposure Maps" as defined in Section 150.7 of 14 CFR Part 150 includes: Figure 6.1, 2009 Noise Contours; Figure 6.2, 2014 Noise Contours; Figure 5–1, Runway 02 Flight Tracks; Figure 5–2, Runway 07 Flight Tracks; Figure 5–3, Runway 11 Flight Tracks; Figure 5–4, Runway 20 Flight Tracks; Figure 5–5, Runway 25 Flight Tracks; Figure 5–6, Runway 29 Flight Tracks; Figure 5.7, Helicopter Flight Tracks, Figure 5.8 Local Flight Tracks; Table 5.1, 2008 Annual Operations; Table 5.2, 2008 Annual-Average Day Fleet Mix (Itinerant Operations); Table 5.3, 2008 Annual Average Day Fleet Mix (Local Operations); Table 5.4 2013 Annual Operations; Table 5.5, 2013 Annual-Average Day Fleet Mix (Itinerant Operations); Table 5.6, 2013 Annual Average Day Fleet Mix (Local Operations); Figure 5.10, Percentage Runway Utilization; and Table 5.11,

Percentage Helicopter Runway/Helipad Utilization. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on July 8, 2010.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following location: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, 407–812–6331.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on July 8, 2010.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 2010–17512 Filed 7–16–10; 8:45 am]

BILLING CODE 4910–13–P

TREASURY DEPARTMENT

Senior Executive Service; Special Inspector General for the Troubled Asset Relief Program; Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the SIGTARP Performance Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Special Inspector General for the Troubled Asset Relief Program Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in SIGTARP. The board will perform PRB functions for other bureau positions if requested.

Compostion of SIGTARP PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Kevin Puvalowski, Regional Director.

Christy Romero, Chief of Staff.

Timothy Lee, Senior Policy Analyst.

Dr. Eileen Ennis, Deputy Special Inspector General, Operations.

Kurt Hyde, Deputy Special Inspector General, Audit.

Christopher Sharply, Deputy Special Inspector General, Investigations.

Brian Saddler, Chief Counsel to the Special Inspector General.

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Sally Ruble, Human Resources Specialist, 1801 L Street, NW., Washington, DC 20220. Telephone: 202 927–9457.

Dated: June 24, 2010.

Deborah Mason,

Director, Human Resources, Operations Division.

[FR Doc. 2010–17584 Filed 7–16–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Ideal Federal Savings Bank, Baltimore, Maryland; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Ideal Federal Savings Bank, Baltimore, Maryland, (OTS No. 08283), on July 9, 2010.

Dated: July 12, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–17333 Filed 7–16–10; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2011.

DATES: Public comment should be received on or before August 18, 2010.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o)

and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2011. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2011. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2011.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected Federal sentencing practices, the appellate review of those practices, and the role of the Federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) an evaluation of the impact of those decisions on the Federal sentencing guideline system; (B) development of recommendations for legislation regarding Federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* Federal sentencing decisions; and (D) possible consideration of amendments to the Federal sentencing guidelines. Such findings will be informed by the testimony received at seven regional public hearings the Commission held in 2009–2010, feedback received from the judiciary contained in the *Results of Survey of United States District Judges January 2010 through March 2010* issued in June 2010, and other information and input.

(2) Continuation of its study of and, pursuant to the directive in section 4713 of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Public Law 111–84, report to Congress on statutory mandatory minimum penalties, including a review of the operation of the "safety valve" provision at 18 U.S.C. 3553(e). The findings of the report will be informed by the testimony received at the hearing on statutory mandatory minimum penalties the Commission held on May 27, 2010, the regional public hearings and survey of United States District Judges referred to in paragraph (1), and other information and input.

(3) Study of and, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195, report to Congress regarding violations of section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)), sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. 2278, 2279, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*), including consideration of amendments to § 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) or other guidelines in Part K or Part M of Chapter Two of the *Guidelines Manual* that might be appropriate in light of the information obtained from such study.

(4) Implementation of the directive in section 10606(a)(2)(A) of the Patient Protection and Affordable Care Act, Public Law 111–148, regarding health care fraud offenses and any other crime legislation enacted during the 111th Congress warranting a Commission response.

(5) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled *Cocaine and Federal Sentencing Policy;* possible consideration of amending the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) across drug types; and development of appropriate guideline amendments in response to any related legislation enacted during the 111th Congress.

(6) Continuation of its review of child pornography offenses and possible report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory changes that may be appropriate.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the *Guidelines Manual,* and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year study of the statutory and guideline definitions of "crime of violence", "aggravated felony", "violent felony", and "drug trafficking offense", including (A) an examination of relevant circuit conflicts regarding whether any offense is categorically a "crime of violence", "aggravated felony", "violent felony", or "drug trafficking offense" for purposes of triggering an enhanced sentence under certain Federal statutes and guidelines; (B) possible consideration of an amendment to provide an alternative approach to the "categorical approach", *see Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; and (C) possible consideration of an amendment to provide that the time period limitations in subsection (e) of §4A1.2 (Definitions and Instructions for Computing Criminal History) apply for purposes of determining the applicability of enhancements in §2L1.2 (Unlawfully Entering or Remaining in the United States).

(9) Consideration of a possible amendment to provide a reduction in the offense level for certain deportable aliens who agree to a stipulated order of deportation.

(10) Examination of, and possible amendments to, the guidelines and policy statements in Part D of Chapter Five of the *Guidelines Manual* pertaining to supervised release.

(11) Continued study of alternatives to incarceration, including possible consideration of any changes to the *Guidelines Manual* that might be appropriate in light of the information obtained from that study.

(12) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the Federal courts.

(13) Multi-year review of the guidelines pertaining to environmental crimes, with particular consideration of whether the fine provisions in Part C of Chapter Eight of the *Guidelines Manual* should apply to such offenses.

(14) Consideration of miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1,

2011. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

William K Sessions III,

Chair.

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Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2010; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 10–87; FCC 10–123]

Assessment and Collection of Regulatory Fees for Fiscal Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we amend our Schedule of Regulatory Fees to collect $335,794,000 in regulatory fees for Fiscal Year (FY) 2010, pursuant to section 9 of the Communications Act of 1934, as amended (the Act). These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.

DATES: August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: July 8, 2010.
Released: July 9, 2010.
By the Commission.

Table of Contents

I. Introduction

1. In this *Report and Order,* we conclude the Assessment and Collection of Regulatory Fees for Fiscal Year ("FY") 2010 proceeding to collect $335,794,000 in regulatory fees for FY 2010, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] The annual regulatory fee amount to be collected is established each year in the Commission's Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.[2] In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during an August 2010 filing window.

II. Report and Order

2. On April 13, 2010, we released a *Notice of Proposed Rulemaking ("FY 2010 NPRM")* (75 FR 21536, April 26, 2010) seeking comment on regulatory fee issues for FY

[1] 47 U.S.C. 159(a).

[2] *See* Consolidated Appropriations Act, 2010, Public Law 111–117 for the FY 2010 appropriations act language for the Commission establishing the amount of $335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to section 9 of the Communications Act.

2010.[3] The section 9 regulatory fee proceeding is an annual rulemaking process to ensure the Commission collects the required fee amount each year. In the *FY 2010 NPRM,* we proposed to retain the section 9 regulatory fee methodology used in the prior fiscal year except as discussed below. We received nine comments and five reply comments.[4] We address the issues raised in our *FY 2010 NPRM* and these comments below.

A. FY 2010 Regulatory Fee Assessment Methodology

3. In our FY 2010 regulatory fee assessment, we will use the same section 9 regulatory fee assessment methodology adopted in FY 2009. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2010 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix B. To collect the $335,794,000 required by Congress, we adjust the FY 2009 amount downward by 1.8 percent and allocate this amount across the various fee categories. Consistent with past practice, we then divide the FY 2010 amount by the number of estimated payment units in each fee category to determine the unit fee.[5] As in prior years, for cases involving small fees, *e.g.,* licenses that are renewed over a multiyear term, we divide the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of section 9(b)(2) of the Act.

4. In calculating the FY 2010 regulatory fees listed in Appendix C, we further adjusted the FY 2009 list of payment units (see Appendix D) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases were used; in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[6] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2010, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2010 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate also may be rounded or adjusted slightly to account for these variables.

1. AM and FM Radio Stations

5. As in previous years, we consider the additional factors of facility attributes and the population served by each radio station in determining regulatory fees for AM and FM radio stations. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Appendix E. Consequently, the population served, as well as the class and type of service (AM or FM), will continue to determine the amount of regulatory fee to be paid.[7]

6. In response to our FY 2010 *Notice of Proposed Rulemaking,* we received two comments and one reply comment regarding regulatory fees applicable to radio stations. In his comment, Robert Bittner states that the regulatory fee structure unfairly favors the largest AM, FM, and television stations, which have much higher revenues.[8] Mr. Bittner compares the greater revenues earned by large AM, FM, and TV stations and the proportion of regulatory fees that they pay with the revenues and regulatory fees of smaller markets.[9] Mr. Bittner proposes the Commission use a flat percentage of a station's income as a more equitable methodology for assessing regulatory fees.[10] As an alternative approach, Mr. Bittner suggests that the Commission assess regulatory fees on a per-person basis based on the station's city-grade contour, taking into consideration reductions for AM stations and those stations that have to reduce power at night.[11] Finally, Mr. Bittner argues that the population thresholds currently in use are too narrow, thereby favoring the larger stations, which are well beyond the 750,000 population threshold. In his reply comment, Mr. Alex Goldman agrees with Mr. Bittner's recommendations.[12]

7. Mr. Edward A. Schober, representing Radiotechniques Engineering, also submitted a comment regarding radio station regulatory fees. Mr. Schober recommends that the Commission review the regulatory fee structure for AM radio stations in which fees, from highest to lowest, are currently assessed according to class: Class A, B, D, and C. Mr. Schober argues that Class D AM radio stations should be assessed the lowest AM regulatory fee as a class of service.[13] In addition, Mr. Schober also recommends that the AM and FM radio station regulatory fees be related to the amount of spectrum occupied by the stations, which is 100 kHz for FM stations and 10 kHz for AM stations; hence, he asserts that AM stations should be assessed 10 percent of the FM station fee covering the same population.[14]

8. Although Mr. Bittner and Mr. Schober provide interesting recommendations, the Commission is required to comply with the language and intent of 47 U.S.C. 159, which governs the assessment of regulatory fees. Any changes in fee methodology must be consistent with the governing statute, including the prior notification to Congress required therein. Mr. Bittner's recommendation to assess a fee based on revenue income is not without precedent; we currently consider revenues in assessing regulatory fees for the Interstate Telecommunications Service Provider (ITSP) fee. However, there are two significant obstacles to the use of revenues in assessing radio and TV station fees: (1) In contrast to ITSPs, radio stations are not required to submit income or revenue information, which means that radio and television stations would be left to the honor system in determining their regulatory fee obligation (and since revenues on a per station basis can fluctuate from year to year, it would be difficult for the Commission to project the total revenue base upon which regulatory fees would be calculated for future collections), and (2) there are over 12,000 radio and television facilities for which income data would have to be gathered and maintained from year to year.

9. Mr. Bittner also recommends using a fee per person regulatory fee methodology for radio stations based on a station's city-grade contour, rather than the current flat fee per station.[15] According to Mr. Bittner, the advantage here would be for radio stations to account for every person within the station's contour. Implementing such a regulatory fee methodology would be very burdensome for both the Commission and the licensees, with more than 10,600 radio stations having to calculate the per person fee each year. Moreover, if the Commission were to change to a fee per person methodology, there would actually be double-counting of persons that are served by many radio stations in the same community. For example, in a city such as Los Angeles, there are many radio stations that serve the same listening public, and if we assessed a fee on a per person basis, many of these radio stations would be paying a regulatory fee for the same person many times over. Thus, this proposed "per person" fee would not improve upon the current

[3] *See FY 2010 NPRM.*

[4] *See* Appendix A for the list of commenters and abbreviated names.

[5] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

[6] The databases we consulted are the following: the Commission's Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report,* as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

[7] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee for a licensed station in that respective service category. For example, in FY 2009 the regulatory fee for an AM radio station Construction Permit was no higher than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

[8] *See* comments of Robert Bittner at page 1.

[9] *Id.* at page 1.

[10] *Id.*

[11] *Id.*

[12] *See* comments of Alex Goldman at page 1.

[13] *See* comments from Edward A. Schober, representing Radiotechniques Engineering, at page 2.

[14] *Id.* at pages 1–2.

[15] Comments by Robert Bittner, at page 1.

assessment methodology, under which regulatory fees are assessed on a per license per station basis based on the population reach of the signal. For all of these reasons, implementing a fee structure based on a per person basis would be impractical as well as unmanageable.

10. Finally, Mr. Schober recommends that the Commission use spectrum occupancy as the basis of assessing AM and FM regulatory fees. The Commission's current system uses population as the basis for differentiating between higher and lower regulatory fees. There is a dearth of data in the record to support a correlation between the amount of bandwidth occupied and the appropriate amount of regulatory fees to be assessed. Furthermore, the correlation between spectrum use and regulatory fees may not be consistent with the intent of the original Section 9 legislation. The original Section 9 legislation only differentiates radio station regulatory fees by class and by type of service (AM or FM).[16] We do not dismiss Mr. Schober's points about the need to review the current AM fee structure based on class, and find that this fee structure should be reviewed further for future funding years. Although the original AM and FM fee grid was submitted as a comment by the National Association of Broadcasters (NAB) and supported by 19 State Broadcaster Associations, it should be noted that the Commission adopted this grid in its FY 1998 *Report & Order,*[17] (63 FR 35847, July 1, 1998) more than a decade ago.

2. Submarine Cable Methodology

11. In the NPRM, we proposed to continue to use an 87.6/12.4 percent revenue allocation between submarine cable and satellite/terrestrial for the bearer circuit regulatory fees for 2010.[18] This allocation was established by the Commission in the *FY 2009 Regulatory Fees Report and Order,*[19] (74 FR 40089, August 11, 2009) and was based on a "Consensus Proposal" from a large group of submarine cable operators that was the basis for Commission revising the methodology for the bearer circuit regulatory fee in the *Submarine Cable Order.*[20] In that Order, the Commission acted on the Consensus Proposal and adopted a new submarine cable bearer circuit methodology that assesses regulatory fees on a per cable landing license basis, with higher fees for larger submarine cable systems and lower fees for smaller systems, without distinguishing between common carriers and non-common carrier cables.[21] In the NPRM we stated that since we do not have any additional information that would lead us to change the allocation, we would use the 87.6/12.4 percent allocation to calculate the FY 2010 bearer circuit regulatory fees.[22]

12. In response to the NPRM, Global Crossing North America, Inc. ("GCNA") filed comments seeking changes to the regulatory fee methodology for bearer circuits adopted by the Commission in the *Submarine Cable Order.*[23] GCNA urges the Commission to place a limit on the aggregate fee that a submarine cable operator (or group of affiliated operators) should be required to pay in any given fiscal year to prevent the total regulatory fee from reaching an inequitable level.[24] GSNC suggests several changes that the Commission could make to the regulatory fee methodology to address its concerns: (1) Imposing a fee on no more than two cable landing licenses held by a single licensee or group of affiliated licensees, (2) limiting the aggregate fee that any licensee or group of affiliated licensees must pay, (3) defining the "system" subject to a regulatory fee as an integrated network of cables, rather than presuming that each license represents a separate system, or (4) changing from the 87.6/12.4 percent allocation to a different one, such as a 50/50 percent allocation.[25] Verizon and Qwest Communications International, Inc ("Qwest") filed reply comments opposing GCNA's proposals.[26] GCNA filed reply comments noting that the Office of the Managing Director ("OMD") had denied its petition to have its 2009 regulatory fees reduced.[27]

13. We will not make any changes to the methodology for the bearer circuit regulatory fees and will use the 87.6/12.4 percent revenue allocation for 2010. The Commission adopted the current methodology in 2009 in the *Submarine Cable Order,* and it has only been in place since that time. In the *Submarine Cable Order* the Commission found that this methodology allocates bearer circuit regulatory fees in an equitable and competitively neutral manner.[28] As Qwest and Verizon point out, the proposals from GCNA would shift the payment of the regulatory fees to the benefit of a few payers, such as GCNA, and to the detriment of most. The Commission must collect a certain amount of revenue from the bearer circuit regulatory fee category each year. Reducing the regulatory fees that certain submarine cable operators pay by either limiting the number of cable landing licenses for which a fee must be paid, limiting the aggregate fee a submarine cable operator must pay or changing the basis for the fees to a "system" fee that may include multiple cable landing licenses, will mean that other submarine cable operators will have to pay higher regulatory fees. We agree with Qwest that these changes would disadvantage cable operators with only one or two cables by increasing the proportion of the bearer circuit fee that they must pay.[29] Thus, we find that these proposals would not be as equitable as the methodology adopted in the *Submarine Cable Order.*

14. We also decline to change the basis for the assessment of the regulatory fee on submarine cable operators. In the *Submarine Cable Order* the Commission adopted a methodology for submarine cables based on a per cable landing license fee consistent with the Consensus Proposal.[30] GCNA proposes that the Commission change the basis for the fee to be a "system," which may include multiple cable landing licenses.[31] This proposal, in addition to shifting the regulatory fees from operators with multiple submarine cable licenses to other submarine cable operators, would add complexity to the administration of the regulatory fees. In addition to being equitable and competitively neutral, the current methodology is easy to administer.[32] As Qwest notes, using a "system" as the basis for the submarine cable fees will require the Commission to establish a new process to determine which submarine cable licenses comprise a "system" and to maintain an updated list of systems.[33] This would be complex and controversial because different submarine cable operators may have different criteria for what comprises a system and indeed may argue that all of their submarine cables comprise a "system" regardless of any difference in technology or geography between the submarine cables.[34] In addition, changing what is meant by a cable system will affect the Commission's submarine cable licensing procedures. As the Commission noted in the *Submarine Cable Order,* adoption of the new regulatory fee methodology did not amend the rules for licensing submarine cables,[35] and we should not interpret our licensing rules for the purpose of achieving a particular result in connection with the application of the regulatory fee methodology.

15. Finally, we will not change the revenue allocation between submarine cable operators and terrestrial/satellite operators for the 2010 regulatory fees. For the 2009 regulatory fees the Commission used the 87.4/12.6 percent allocation proposed in the Consensus Proposal.[36] The Commission noted in the *Submarine Cable Order* that this apportionment would be determined on an annual basis in the annual regulatory fee proceeding.[37] In the NPRM we proposed to continue to use the 87.4/12.6 percent revenue allocation because we did not have any information on which to base a change in that allocation.[38] We do not find that there is any basis in the record of this proceeding to alter that allocation. GCNA proposes that we change the allocation and suggests a 50/50 allocation.[39] We agree with Qwest and

[16] 47 U.S.C. 159(g).

[17] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* Report and Order, FCC 98–115, 13 FCC Rcd 19820, para. 37 (adopted June 16, 1998).

[18] NPRM at para. 6.

[19] *See FY 2009 Report and Order* at para 8.

[20] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009) ("*Submarine Cable Order*").

[21] *Id.*

[22] NPRM at para. 6.

[23] GCNA comments. GCNA was not part of the group of submarine cable operators that supported the Consensus Proposal, but GCNA also did not file comments opposing the Consensus Proposal. *See Submarine Cable Order* at n. 3, para. 11. *See also* GCNA comments at n. 22.

[24] GCNA comments at 1.

[25] GCNA comments at pages 6–7.

[26] Qwest reply comments; Verizon reply comments.

[27] GCNA reply comments.

[28] *Submarine Cable Order* at paras. 1, 7, 9.

[29] Qwest reply comments at 1–2.

[30] *Submarine Cable Order* at para. 1.

[31] GCNA comments at 7.

[32] *Submarine Cable Order* at paras. 7, 10.

[33] Qwest reply comments at 2.

[34] We note that most U.S. international service providers state that they provide seamless global services over their global networks which integrate subcable, terrestrial and satellite facilities.

[35] *Submarine Cable Order* at para. 12.

[36] *FY 2009 Report and Order* at para. 8.

[37] *Submarine Cable Order* at n. 35.

[38] NPRM at 6.

[39] GCNA comments at 7–8.

Verizon that GCNA has not provided any basis for a change in the allocation.[40] GCNA questions the appropriateness of the current allocation, but provides no basis for a 50/50 allocation other than that it was included in a 2008 proposal by certain cable operators, including GCNA, as part of the process that lead to the Consensus Proposal.[41] We will continue to review this allocation as part of our annual regulatory fee proceeding, but do not find any basis to alter the 87.4/12.6 percent revenue allocation for the 2010 regulatory fees.

B. Regulatory Fee Obligations for Digital Full Service Television Broadcasters

16. The digital transition on June 12, 2009 eliminated the distinction between digital and analog full-service television stations. As a result, beginning in FY 2010, the Commission will collect annual regulatory fees from all digital full-service television stations, and the "digital-only" exemption will no longer be applicable. Also, it is possible that because this is the first year following the Commission's transition to digital full service television, some facilities may be operating under a Special Temporary Authority (STA) beginning on October 1, 2009 until the digital license is issued. For FY 2010 regulatory fee purposes, facilities operating under an STA will be considered to be fully operational licensed facilities and will be obligated to pay the same regulatory fee as a licensed full-service television station.

17. Although we did not seek comment on this issue, we received two comments regarding the assessment of regulatory fees for VHF television stations in the wake of the digital conversion. Fireweed Communications ("Fireweed") states that VHF television station channels come in two ranges: Channels 2–6 (Low VHF and less desirable) and Channels 7–13 (High VHF and more desirable).[42] Fireweed states that historically VHF television stations have been considered to be "superior to UHF", and as a result, VHF stations were assessed a much higher regulatory fee than UHF stations. Fireweed further asserts that, with the transition to digital TV, UHF channel assignments have become more advantageous, both in terms of lower interference and greater desirability.[43] Therefore, Fireweed contends, it should not be surprising to see VHF licensees transitioning not only to UHF channels, but also between VHF Channels 2–6 and VHF Channels 7–13.[44] Because of this transitioning within VHF and to UHF channels, Fireweed argues, the Commission should base its regulatory fee structure on three tiers of bands, VHF Channels 2–6, VHF Channels 7–13, and all UHF Channels (channels 14 and greater).[45]

18. Sky Television LLC, Spanish Broadcasting System, Inc., and Sarkes Tarzian, together known as VHF Digital Stations ("VHF Digital Stations"), also filed comments relating to VHF and UHF television stations. VHF Digital Stations urge the Commission to combine VHF and UHF television stations into one fee category by market size.[46] VHF Digital Stations recommend that, instead of having six separate VHF and six separate UHF regulatory fee categories, the Commission should combine VHF and UHF station fees into six categories according to market size and identify them simply as full service digital television stations.[47] By combining the VHF and UHF fee categories into one as VHF recommends, the resulting fee category would in effect eliminate the historical distinction between the higher VHF fees and the lower UHF fees. VHF Digital Stations also argue that the current regulatory fee methodology structure is inconsistent with the spirit of regulatory fees in which higher fees are assessed for more desirable spectrum; in the digital world, VHF argues, the UHF channels are the desirable spectrum.[48]

19. We acknowledge that in the digital transition some stations moved from VHF to UHF channels. In fact, over the past several months, the number of entities changing channels from VHF to UHF has totaled over 38 percent.[49] This will impact the regulatory fees paid by those VHF television stations still operating on VHF channels. In many of the Nielsen Designated Market Areas (DMA), the number of VHF stations decreased almost 50 percent and this in turn will increase the regulatory fee for these categories twofold. While this potential fee escalation underscores the need for more fundamental, long term reform of our regulatory fee process, it is imperative that we take steps under our current fee structure to mitigate the impact of this shift on television stations still operating on VHF channels and, at the same time, take at least a partial step toward more fairly apportioning fees across all television markets.

20. A number of commenters have urged us to either combine all VHF and UHF full-service television stations into one fee category, or else to establish a three-tiered regulatory fee system for full-service televisions.[50] Rather than "flash cut" to one fee category, which would result in a large fee increase to many UHF licensees for FY2010, today we use the shift in stations discussed to move toward a combined fee category by including in the UHF category the units and their corresponding dollar amounts of the VHF stations that changed channels during or after the digital conversion. Thus, we use the VHF fee amount in the proposed FY 2010 *NPRM* as a starting point in calculating the final FY 2010 VHF regulatory fee rate. Then, in order to calculate the VHF and UHF FY 2010 regulatory fees, we move the number of "shifting" units (units of the stations that changed channels from VHF to UHF) and their corresponding dollar amounts from the VHF fee category by market size to the UHF fee category within the same market size. Thus, within each UHF fee category by market size, the projected revenue amount is increased along with the number of units in that fee category. The resulting larger projected revenue amount and the higher number of units is then used to calculate each UHF fee category by market size. It is important to note that, by moving only the dollar amounts and their corresponding units from the VHF to the UHF fee category by market size, the impact of the resulting fee increase on the UHF fee category is approximately 18%–20% less than the fee increase that would have resulted from combining all VHF and all UHF television stations into one digital category by market size. We find this to be in the public interest because it is a more equitable result for all entities involved.

C. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

21. Although the digital transition of full-service television stations was completed on June 12, 2009, the digital transition for Low Power, Class A, and TV Translators/Boosters is still voluntary, and there is currently no set date for the completion of this transition. Historically, the discussion of the digital transition conversion with respect to regulatory fees has centered on full-service television stations, and therefore, the elimination of the "digital only" exemption described in paragraph 20 has no impact on this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is voluntary and the transition will occur over a period of time, it is possible that some facilities will convert from analog to digital more quickly than others. During this interim transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities could be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. For regulatory fee purposes, a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

D. Commercial Mobile Radio Service Messaging Service

22. Commercial Mobile Radio Service ("CMRS") Messaging Service, which replaced the CMRS One-Way Paging fee category in

[40] Qwest reply comments at 2; Verizon reply comments at 2–3.

[41] GCNA comments at 7, n. 21.

[42] *See* comments of Fireweed Communications, LLC at page 2.

[43] *Id.* at pages 1–2.

[44] *Id.* at page 2.

[45] *Id.* at page 3.

[46] *See* comments of VHF Digital Stations at page 1.

[47] *Id.*

[48] *Id.* at pages 3–4.

[49] Data from the Media Bureau's Consolidated Database System (CDBS) shows that prior to the digital conversion, there were 600 full service analog VHF stations; after the digital conversion, there were 370 VHF digital television stations, a reduction of 230 VHF stations.

[50] For comments regarding a combined VHF/UHF television fee category, see comments of VHF Digital Stations at pages 1–2; for recommendations on a three-tiered regulatory fees system for television stations, see comments of Fireweed Communications at page 3.

1997, includes all narrowband services.[51] Since 1997, the number of subscribers has declined from 40.8 million to 6.5 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997–1999. Because of this declining subscribership, since FY 2003 the Commission has maintained the CMRS Messaging fee rate at $0.08 per subscriber, the rate that was established in FY 2002.[52] We therefore sought comment in the FY 2010 *Notice of Proposed Rulemaking* to continue maintaining the regulatory fee rate at $0.08 per subscriber due to the declining subscriber base in this industry.[53]

23. We received one comment. The American Association of Paging Carriers ("AAPC") filed a comment urging the Commission to either maintain the FY 2010 CMRS Messaging Service fee at $0.08 per unit or prescribe a lower fee.[54] AAPC asserts that the industry circumstances of 2003 of declining subscribership continue today.[55] AAPC also contends that a review of the regulatory fee methodology would reveal that further reduction in the paging regulatory fee is warranted.[56]

24. We agree with AAPC that the circumstances prevailing in 2003 still exist today, and conclude that the FY 2010 CMRS Messaging regulatory fee should remain at a rate of $0.08 per subscriber.

E. Interstate Telecommunications Service Provider Fees

25. As we noted in Fiscal Year 2009 Regulatory Fee *Report and Order,*[57] the comprehensive regulatory fee revision issues raised in the FY 2008 *Further Notice of Proposed Rulemaking (FNPRM)*[58] (73 FR 50201, August 26, 2008) remain outstanding. In part, we invited the Interstate Telecommunications Service Providers (ITSPs) to comment on several specific regulatory fee issues.[59] We note that in addition to our request for comment, we released specific data to assist commenters.[60] The responses were not as detailed as we had hoped. Indeed, we received two comments and one reply comment on the subject of regulatory fees applicable to ITSPs. STi Prepaid LLC ("STi Prepaid") argues that since its inception in 1994, the Commission's regulatory fee methodology has not changed significantly,[61] and as a result, the regulatory fee structure may not accurately reflect significant changes that have occurred in the interstate and international telecommunications marketplace since that time.[62] Because the marketplace has changed while the regulatory fee structure has not, STi Prepaid asserts that ITSP providers bear by far the largest burden of total regulatory fees, and further increases in ITSP regulatory fees borne by interstate and international providers are no longer tenable.[63] STi Prepaid urges the Commission to re-evaluate the allocation and methodology that is used to calculate ITSP regulatory fees.[64]

26. Unlike most other regulatory fees that are based on a flat fee per license, or on some multiplier based on the regulatee's market size, ITSP regulatory fees are based on revenues, with ITSP providers paying a regulatory fee on each dollar of revenue generated from both interstate and international revenues. STi contends that, since ITSPs compete with entities paying regulatory fees based on a flat fee, the current regulatory fee methodology applicable to ITSPs puts them at a competitive disadvantage.[65] Further, STi Prepaid urges the Commission to consider the size and scope of the carrier's resources, as well as the type of customer base, as grounds for regulatory fee relief.[66]

27. In its comments, The United States Telecom Association (USTelecom) argues that ITSP providers pay a disproportionate share of the regulatory fee burden based on a methodology that was established in 1994, and that this burden is passed on to consumers.[67] USTelecom also argues that the methodology currently used to calculate regulatory fees does not take into consideration the changes that have occurred in the communications marketplace since 1994 that directly impact the ITSP industry.[68] Updating FTEs and proportionally allocating the cost of support bureaus, USTA contends, would be the first step in rectifying an otherwise inequitable regulatory fee methodology that disproportionally burdens ITSP providers.[69] In its reply comments, STi Prepaid again stresses that there have been few reforms in the regulatory fee methodology since 1994,[70] and argues that, consistent with similar arguments for reforming the regulatory fee methodology made by paging, submarine cable, and VHF television service licensees during the past several years, [71] the Commission should "look for ways to ensure that [its] regulatory fee methodologies continue to reflect the industries [it] regulates.[72]

28. Section 9 of the Act permits the Commission to "add, delete, or reclassify services in the [regulatory fee] Schedule to reflect * * * changes in the nature of * * * services as a consequence of Commission rulemaking proceedings or changes in law,"[73] and significant changes in telecommunications services and markets have unquestionably occurred as a result, *inter alia,* of the implementation of the Telecommunications Act of 1996. Our current fee methodology is based in part on a macro-level FTE data model that we instituted in FY 1999 after we discontinued attempts to base our fee schedule on the available cost data first used in 1997.[74] Since the inception of that last change to our model, both the industry and the Commission have undergone significant change. Accordingly, we agree with the notion that the proportion of regulatory fees paid by ITSP providers as a whole should be re-examined. We further believe that we should consider whether and how our methodology for assessing regulatory fees should be changed to reflect other changes in the communications landscape.

29. With respect to the specific issue of rebalancing the fees paid by ITSPs, we note that for a number of years, the regulatory fees collected from ITSP service providers have accounted for a significant percentage of all regulatory fees collected.[75] In recent years

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[51] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) ("*FY 1997 Report and Order*").

[52] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, paras. 21–22 (2003) ("*FY 2003 Report and Order*").

[53] Between FY 1997 and FY 2009, the subscriber base in the paging industry declined 84 percent from 40.8 million to 6.5 million subscribers, according to FY 2009 collections data as of September 30, 2009.

[54] *See* comments of American Association of Paging Carriers, at page 1.

[55] *Id.* at page 3.

[56] *Id.* at page 2.

[57] Assessment and Collection Of Regulatory Fees For Fiscal Year 2009, Assessment And Collection Of Regulatory Fees For Fiscal Year 2008, *Report and Order,* 24 FCC Rcd. 10301 (2009).

[58] Assessment and Collection Of Regulatory Fees For Fiscal Year 2008, *Report and Order and Further Notice of Proposed Rulemaking,* 24 FCC Rcd. 6388 (2008) *(2008 Regulatory Fee R&O and FNPRM).*

[59] *Id.,* at 6402–05. We sought comments on ways to improve our regulatory fee process regarding any and all categories of service (see paras. 31–36), and we specifically invited ITSPs to respond to the following:

41. Relative to other services that pay regulatory fees, we recognize that the ITSP market has changed since the Commission calculated the cost of ITSP regulation in FY 1997. We agree that it is appropriate to review our methodology for assessing regulatory fees on ITSPs. We seek comment on whether ITSPs current share of regulatory fees, which has not been revised significantly since 1997, is appropriate. Commenters should discuss the ITSP market and how it has changed since 1997 relative to the other services that pay regulatory fees such as wireless and broadcast services. Commenters suggesting a change in the proportionate share for ITSPs should propose a methodology. For example, would it be more appropriate to return to the original Schedule of Regulatory Fees and assess fees per 1,000 access lines? We note that we have experienced significant success and accuracy with a number-based approach for CMRS. Would number of access lines be most appropriate?

[60] *The Office of Managing Director Releases Data to Assist Commenters on Issues Presented in Further Notice Of Proposed Rulemaking Adopted on August 1, 2008,* Public Notice, 23 FCC Rcd. 14581 (2008).

[61] STi Prepaid's view of the antecedent regulatory fee events is a generalized overstatement. Indeed, the Commission has opened a number of proceedings to adjust the fee methodology, *see e.g.,* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order,* 19 FCC Rcd. 11662, 11667, para. 12 (2004).

[62] *See* comments of STi Prepaid LLC at page 1.

[63] *Id.*

[64] *Id.*

[65] *Id.* at page 4.

[66] *Id.* at page 8.

[67] *See* comments of The United States Telecom Association, at page 1.

[68] *Id.* at pages 1–2.

[69] *Id.* at pages 1, 4–5.

[70] *See* STi Prepaid reply comments at page 1.

[71] *Id.* at pages 2–3.

[72] *Id.* at page 4.

[73] 47 U.S.C. 159(b)(3).

[74] Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order,* 19 FCC Rcd. 11662, 11667, para. 12 (2004)

[75] *See e.g.,* Assessment and Collection of Regulatory Fees for Fiscal Year 1997, Report and Order, 12 FCC Rcd 17161, Attachment C (1997). The pro-rated revenue requirement was $64,960.438 of a total revenue requirement of $152,523,000.

the ITSP industry has experienced a decline in revenues but, because ITSPs do not pay a flat regulatory fee but instead pay fees based on a percentage of their revenues, the regulatory fees paid by ITSP service providers has risen substantially.[76] Because the comments to our question did not provide sufficient detail, we are unable to ascertain exactly how the collection of fees from end users has affected the operation of the ITSP service providers or to what extent a shift in the amount of the payment would be warranted to address the alleged competitive disadvantage or provide warranted relief to ITSP service providers.

30. Moreover, we are aware that reducing the fees paid by ITSP providers will increase the fees paid by licensees in other service categories (some of which are not able to pass the cost of the fee to the end user), and this could potentially impact the regulatory fees paid by all other entities regulated by the Commission. Unless we revisit the fee schedule in light of all the shifts that have occurred in the market for telecommunications services, and consider carefully what further changes may occur in the foreseeable future, we may succeed in addressing one anomaly while unintentionally creating others.

31. In light of these considerations and consistent with the comments received in response to the FY 2008 *Further Notice of Proposed Rulemaking,* we acknowledge that the revenue base upon which the ITSP fee is calculated has been decreasing for several years.[77] Therefore, we believe it would best serve the public interest for the Commission in FY 2010 to set the ITSP regulatory fee rate at $0.00349 per revenue dollar. In future years, we will further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations. In a separate and forthcoming action, we will call for comment on issues including, but not limited to, how changes in the telecommunications marketplace may warrant rebalancing of regulatory fees among existing service providers, and how further changes to the schedule of fees may be anticipated in light of new changes to the telecommunications landscape resulting from implementation of the National Broadband Plan and the introduction of other new wired and wireless services. This *FNPRM* will therefore serve two purposes: it will update, to the extent necessary, the record on regulatory fee rebalancing that we had already been contemplating for existing services, [78] and it will expand this inquiry to new issues and services not covered by the 2008 *Further Notice of Proposed Rulemaking.*

F. Administrative and Operational Issues

32. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission, and we propose in the following paragraphs to expand upon these improvements. In FY 2010, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process.

1. Mandatory Use of Fee Filer

33. In *FY 2009,* we required that all regulatees use the Commission's electronic filing and payment system (also known as "Fee Filer").[79] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password. This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminated the need to manually complete and submit a hardcopy Form 159, and for the Commission, having the data in electronic format made it much easier to process payments more efficiently and effectively. Because of the success of this process change, we proposed in the FY 2010 *NPRM* to continue to make the use of Fee Filer mandatory as the starting point for filing annual regulatory fees. We sought comment on this proposal, but received no comments or reply comments on this specific issue.

34. The mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer—it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer. This is one reason it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES). Going forward, only Form 159–E documents generated from Fee Filer will be permitted when sending in a regulatory fee payment to U.S. Bank. These Form 159–E's not only will reduce errors resulting from illegible handwriting on hardcopy Form 159's, but, because they are generated from Fee Filer, these forms also will create an electronic record of licensee payment attributes that are more easily tracked and searched than hardcopy Form 159's completed manually and mailed to the Commission. Hence, in FY 2010, we conclude that regulatees must start the FY 2010 regulatory fee payment process using the Commission's electronic filing and payment system ("Fee Filer").

2. Notification and Collection of Regulatory Fees

a. Pre-Bills

35. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers ("ITSPs"), Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,[80] holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.[81] The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order,* the Commission decided to have the attributes of these pre-bills viewed in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.[82] Overall, the response to this procedural change was positive. In our FY 2010 *NPRM,* the Commission again proposed to continue the practice of not mailing out annual regulatory fee bills. We sought comment on this issue, and received one comment from the American Cable Association (ACA).

36. ACA urges the Commission to send e-mails to CARS and Earth Station licensees to notify them when pre-bills are loaded into Fee Filer for viewing, and to mail a final hardcopy notice to these licensees on how to log-in to Fee Filer and access the pre-bill.[83] As an association of small and medium-sized cable companies, ACA believes that many of its member entities are not able to keep up with the Commission's rules and regulations, and therefore the Commission should make more of an effort to reach out to these entities regarding regulatory fees.[84]

[76] Between FY 2007 and FY 2009, the ITSP fee rate increased from $0.00266 to $0.00342 per revenue dollar. Because of further declines in revenue, the FY 2010 ITSP fee rate is slated to increase further from $.00351 (the rate set forth in the FY 2010 *Notice of Proposed Rulemaking)* to $0.00364 per revenue dollar based on more accurate revenue projections available at the time of this *Report and Order.*

[77] The projected FY 2010 ITSP fee factor in the FY 2010 NPRM of $.00351 was based on December 2009 ITSP revenue data. April 2010 ITSP revenue data, however, reflected revenues 3.4 percent lower than projections. This revenue decrease would have resulted in an increase in the resulting fee factor from the projected $.00351 to a fee factor of $.00364. Thus, based on the proposed methodology of the FY 2010 NPRM and the revised revenue numbers, the ITSP fee factor would have increased from $.00342 (FY 2009 ITSP fee rate) to $.00364. The concerns of these providers, which collectively represent 46.82 percent of all regulatory fees paid in any given year, resulted in the adoption, as an interim measure, an ITSP fee rate at $.00349, which is a 2.1% increase from FY 2009. We find this to be a reasonable interim measure pending our review of whether part of that 46.82 percent of the regulatory fee burden might be moved from ITSP in the context of fundamental reform.

[78] The Commission has acted on several of the issues raised in the FY 2008 *Report and Order* and *Further Notice of Proposed Rulemaking,* including implementation of (1) a change in the bearer circuit methodology for calculating regulatory fees, and (2) the elimination of two regulatory fee categories, the *International Public Fixed Radio* and *International High Frequency Broadcast Stations.*

[79] *FY 2009 Report and Order* at paras. 20 and 21.

[80] Geostationary orbit space station ("GSO") licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[81] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[82] *See FY 2009 Report and Order* at paras. 24, 26.

[83] *See* comments of the American Cable Association (ACA) at page 1.

[84] *Id.* at pages 2–3.

37. We agree with ACA that many small and medium-sized regulatees do not have the same resources as large regulatees to monitor Commission rulings on a regular basis. However, we are not imposing any significant burden on these small to medium-sized regulatees. Historically, regulatory fees have always been due in an August or September timeframe, and the due date is generally posted on the Commission-wide Web site weeks before the fee deadline. Hence, by checking the Commission's Web site periodically beginning in July, regulatees will be able to ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill, and make a fee payment.

38. With respect to ACA's recommendation to send e-mails to CARS and Earth Station licensees as a form of notification, the Commission does not maintain a systematic listing of e-mail addresses for individual CARS and Earth Station licensees, and sending out e-mails that are not necessarily current in the Commission's licensing systems may not result in adequate notification. However, once Fee Filer is open to licensees, a public notice will be placed on the Commission's Web site, which will provide the signal for licensees to begin viewing their pre-bill information online. Until the Commission is able to maintain a current, systematic listing of licensee e-mails, the use of Commission e-mails would provide less than adequate notification.

III. Procedural Matters

39. Included below are procedural items as well as our current payment and collection methods, which we have revised over the past several years to expedite the processing of regulatory fee payments. We include these payments and collection procedures here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

A. Public Notices and Fact Sheets

40. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html,* but as in previous years we will not send public notices and fact sheets to regulatees.

B. Assessment Notifications

1. Media Services Licensees

41. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[85] The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[86] Consistent with procedures used last year, we will mail media assessment notifications to licensees in FY 2010 at their primary record of contact in our Consolidated Database System ("CDBS"), and to a secondary record of contact, if available.[87] However, after FY 2010, as part of the Commission's initiative to emphasize electronic filing and reduce paper usage, the Commission will stop mailing out media notification assessments to media licensees. Instead the Commission will rely more on its various Web sites, including the Commission-authorized Web site at *www.fccfees.com,* to notify licensees of pending annual regulatory fees and to update or correct any information regarding their facilities and their fee-exempt status.[88]

42. The decision to discontinue mailing media notifications beginning in FY 2011 is consistent with the Commission's effort to become more electronic and less paper-oriented. However, the Commission understands that not all media licensees are able to access the Commission's various electronic Web sites once the hardcopy notification letters are discontinued in FY 2011. Therefore, to be receptive to the needs of these licensees, the Commission will allow more time for comment by leaving the comment and reply comment period open until September 30, 2010 on the specific issue of whether the media notification letters should be discontinued in FY 2011. Because this decision does not impact FY 2010 regulatory fees, we will be addressing this issue in the Commission's FY 2011 *Notice of Proposed Rulemaking* after we have reviewed the various comments and reply comments submitted. The Commission will also remind media licensees of this proposed change in notification procedures for next year when it sends out letters to media licensees regarding their FY 2010 regulatory fee obligations. To ensure that the comments of all potentially affected persons are properly included in the record, media licensees should submit their comments and reply comments on this issue as follows:

- *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).
- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).
- *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.
- *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format ("PDF") at: *http://www.fcc.gov.*

43. Although the Commission will mail media assessment notifications to licensees in FY 2010, all licensees (including media services) will be required to use Fee Filer as the first step in paying their regulatory fee obligations. The notification assessments

[85] As stated previously at footnote 41, an assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt.

[86] Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[87] We will issue fee assessments for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. As in prior years, fee assessments will not be issued for broadcast auxiliary stations.

[88] If there is a change of address for the facility, it is the licensee's responsibility to make the address change in the Media Bureau's CDBS system, as well as in the Commission's Registration System ("CORES"). There is also a Commission-authorized Web site that media services licensees can use to view and update their exempt status (*http://www.fccfees.com*).

provide licensees with the same media data attributes found in Fee Filer. However, we caution licensees not to send in these notification assessments as a substitute for using Fee Filer as the first step in filing and paying annual regulatory fees. As explained previously, licensees must first log onto the Commission's Fee Filer system to begin the process of filing and paying their regulatory fees, but once in Fee Filer, licensees may pay by check or money order, credit card, or wire transfer. A Form 159–E generated from Fee Filer is required when mailing in the annual regulatory fee payment.

2. CMRS Cellular and Mobile Services Assessments

44. As we have done in prior years, we will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast ("NRUF") report that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[89] The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.[90] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

45. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, the carrier will have an opportunity within a specific timeframe to revise the subscriber count by submitting supporting documentation to substantiate the change. However, instead of mailing the revised figures, providers will be asked to access Fee Filer and follow the instructions provided in order to submit their revised subscriber count along with any supporting documentation.[91] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. The provider will be able to review the decision online in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be assessed. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will *not* be mailed out.

46. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[92] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2009), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. If the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

C. Streamlined Regulatory Fee Payment Process

1. Cable Television Subscribers

47. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier ("CUID") basis.

2. CMRS Cellular and Mobile Providers

48. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[93] We will continue this practice in FY 2010. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2010, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers ("ITSP")

49. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2010, we will continue rounding lines 14 and 16 when calculating the FY 2010 ITSP fee obligation. In addition, as in FY 2009, we will continue the practice of not mailing out Form 159–W via surface mail.

D. Payment of Regulatory Fees

1. Lock Box Bank

50. All lock box payments to the Commission for FY 2010 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://www.fcc.gov/fees/regfees.html.*

2. Receiving Bank for Wire Payments

51. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as to not delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretran.html.*

3. De Minimis Regulatory Fees

52. Regulatees whose total FY 2010 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2010 regulatory fees.

4. Standard Fee Calculations and Payment Dates

53. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

• *Media Services:* Regulatory fees must be paid for initial construction permits (including construction permits for digital television stations) that were granted on or before October 1, 2009 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Beginning in FY 2010, the digital-only exemption for full service VHF and UHF television stations is no longer applicable; with respect to other media services, such as Low Power Television, and TV Translators and Boosters, there is no exemption for having digital service. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the

[89] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005* and *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

[90] *Id.*

[91] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify the change.

[92] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2009* at 1 (released September 2009).

[93] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

holder of the permit or license as of the fee due date.

• *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[94]

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. The number of subscribers, units, or telephone numbers on December 31, 2009 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Appendix C) pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2010.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2009.[95] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2009. In instances where a license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the license as of the fee due date.

• *International Services: Terestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2009 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits as of December 31, 2009. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

E. Enforcement

54. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[96] A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules [97] and in the Debt Collection Improvement Act of 1996 ("DCIA").[98] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[99] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

55. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[100] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

F. Final Regulatory Flexibility Analysis

56. As required by the Regulatory Flexibility Act of 1980 ("RFA"),[101] the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order. The FRFA is set for in Appendix F.

G. Final Paperwork Reduction Act of 1995 Analysis

57. This Report and Order does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c) (4). Completion of the 159 family of forms required by the Commission's regulatory fee payment process is already approved by the Office of Management and Budget under information collections 3060–0589 and 3060–0949.

H. Congressional Review Act Analysis

58. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[102]

[94] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) ("*InterCall Order*").

[95] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2009, rather than on a count as of December 31, 2009.

[96] 47 U.S.C. 159(c).

[97] *See* 47 CFR 1.1910.

[98] Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR Part 1, Subpart O, Collection of Claims Owed the United States.

[99] 47 CFR 1.1940(d).

[100] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[101] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

[102] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

IV. Ordering Clauses

59. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Report and Order *is hereby adopted.*

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in Appendix F, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1 Administrative Practice and Procedure

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

APPENDIX A

List of Commenters

Commenter	Abbreviated name
American Association of Paging Carriers	"AAPC."
American Cable Association	"ACA."
Robert Bittner	"Robert Bittner."
Fireweed Communications, LLC	"Fireweed."
Global Crossing North America, Inc	"GCNA."
Edward A. Schober, Radiotechniques Engineering, LLC	"Radiotechniques Engineering."
STi Prepaid, LLC	"STi Prepaid."
The United States Telecom Association	"USTelecom."
VHF Digital Stations	"VHF Digital Stations."

List of Reply Commenters

Commenter	Abbreviated name
Global Crossing North America, Inc	"GCNA."
Alex Goldman	"Alex Goldman."
Qwest Communications International, Inc	"Qwest."
STi Prepaid, LLC	"STi Prepaid."
Verizon	"Verizon."

APPENDIX B

Calculation of FY 2010 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee category	FY 2010 Payment units	Years	FY 2009 Revenue estimate	Pro-Rated FY 2010 revenue requirement	Computed new FY 2010 regulatory fee	Rounded new FY 2010 regulatory fee	Expected FY 2010 revenue
PLMRS (Exclusive Use)	1,200	10	480,000	469,912	39	40	480,000
PLMRS (Shared use)	11,500	10	2,300,000	2,251,662	20	20	2,300,000
Microwave	9,500	10	2,250,000	2,202,713	23	25	2,375,000
218–219 MHz (Formerly IVDS)	3	10	1,950	1,909	64	65	1,950
Marine (Ship)	8,000	10	750,000	734,238	9	10	800,000
GMRS	9,700	5	275,000	269,220	6	5	242,500
Aviation (Aircraft)	4,600	10	350,000	342,644	7	5	230,000
Marine (Coast)	265	10	123,750	121,149	46	45	119,250
Aviation (Ground)	1,500	10	150,000	146,848	10	10	150,000
Amateur Vanity Call Signs	14,800	10	201,000	196,776	1.33	1.33	196,840
AM Class A [4a]	68	1	248,625	253,752	3,732	3,725	253,300
AM Class B [4b]	1,566	1	2,977,300	3,038,695	1,940	1,950	3,053,700
AM Class C [4c]	918	1	1,055,250	1,077,010	1,173	1,175	1,078,650
AM Class D [4d]	1,689	1	3,515,750	3,588,249	2,124	2,125	3,589,125
FM Classes A, B1 & C3 [4e]	3,104	1	7,384,125	7,374,954	2,376	2,375	7,372,000
FM Classes B, C, C0, C1 & C2 [4f]	3,129	1	9,076,725	9,285,549	2,968	2,975	9,308,775
AM Construction Permits	112	1	42,800	43,683	390	390	43,680
FM Construction Permits [1]	156	1	145,600	105,300	675	675	105,300
Satellite TV	126	1	161,925	165,264	1,312	1,300	163,800
Satellite TV Construction Permit	3	1	1,950	1,990	663	675	2,025
VHF Markets 1–10	20	1	3,258,150	1,631,100	81,555	81,550	1,631,000
VHF Markets 11–25	27	1	3,330,250	1,708,429	63,275	63,275	1,708,425
VHF Markets 26–50	33	1	2,818,125	1,404,112	42,549	42,550	1,404,150
VHF Markets 51–100	48	1	2,708,100	1,140,215	23,754	23,750	1,140,000
VHF Remaining Markets	122	1	1,190,000	747,235	6,125	6,125	747,250
VHF Construction Permits [1]	3	1	17,850	18,375	6,125	6,125	18,375

Fee category	FY 2010 Payment units	Years	FY 2009 Revenue estimate	Pro-Rated FY 2010 revenue requirement	Computed new FY 2010 regulatory fee	Rounded new FY 2010 regulatory fee	Expected FY 2010 revenue
UHF Markets 1–10	117	1	2,109,750	3,776,478	32,278	32,275	3,775,175
UHF Markets 11–25	113	1	1,743,525	3,399,110	30,081	30,075	3,398,475
UHF Markets 26–50	154	1	1,468,500	2,908,952	18,889	18,900	2,910,600
UHF Markets 51–100	245	1	1,246,400	2,828,382	11,544	11,550	2,829,750
UHF Remaining Markets	274	1	380,250	836,331	3,052	3,050	835,700
UHF Construction Permits [1]	12	1	29,250	36,600	3,050	3,050	36,600
Broadcast Auxiliaries	27,500	1	275,000	280,671	10	10	275,000
LPTV/Translators/Boosters/ Class A TV	3,400	1	1,380,000	1,408,457	414	415	1,411,000
CARS Stations	550	1	169,000	172,485	314	315	173,250
Cable TV Systems	64,500,000	1	56,760,000	57,545,458	0.89218	0.89	57,405,000
Interstate Telecommunication Service Providers	$43,300,000,000	1	160,056,000	151,290,200	0.00349400	0.00349	151,117,000
CMRS Mobile Services (Cellular/Public Mobile)	283,000,000	1	49,680,000	50,796,008	0.1795	0.18	50,940,000
CMRS Messag. Services	6,000,000	1	560,000	480,000	0.0800	0.080	480,000
BRS [2] LMDS	1,660	1	552,000	514,600	310	310	514,600
	510	1	107,200	158,100	310	310	158,100
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	2,898,033	1	1,111,779	1,130,306	.390	.39	1,130,233
Submarine Cable Providers (see chart in Appendix C) [3]	34.13	1	7,818,040	7,983,656	233,919	233,925	7,983,860
Earth Stations	3,600	1	850,500	868,038	241	240	864,000
Space Stations (Geostationary)	87	1	11,064,225	11,130,522	127,937	127,925	11,129,475
Space Stations (Non-Geostationary)	6	1	823,350	828,283	138,047	138,050	828,300
Total Estimated Revenue to be Collected	.....	.....	342,998,994	336,693,623	.....	.....	336,712,213
Total Revenue Requirement	.....	.....	341,875,000	335,794,000	.....	.....	335,794,000
Difference	.....	.....	1,123,994	899,623	.....	.....	918,213

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2010 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2010 regulatory fees for AM/FM radio station are listed on a grid located in Appendix B.

APPENDIX C

FY 2010 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	45
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20
PLMRS (Shared Use) (per license) (47 CFR part 90)	20
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10

Fee category	Annual regulatory fee (U.S. $s)
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.33
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21)	310
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	310
AM Radio Construction Permits	390
FM Radio Construction Permits	675
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	81,550
Markets 11–25	63,275
Markets 26–50	42,550
Markets 51–100	23,750
Remaining Markets	6,125
Construction Permits	6,125
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	32,275
Markets 11–25	30,075
Markets 26–50	18,900
Markets 51–100	11,550
Remaining Markets	3,050
Construction Permits	3,050
Satellite Television Stations (All Markets)	1,300
Construction Permits—Satellite Television Stations	675
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	415
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	315
Cable Television Systems (per subscriber) (47 CFR part 76)	.89
Interstate Telecommunication Service Providers (per revenue dollar)	.00349
Earth Stations (47 CFR part 25)	240
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	127,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	138,050
International Bearer Circuits—Terrestrial/Satellites (per 64 KB circuit)	.39
International Bearer Circuits—Submarine Cable	See Table Below

FY 2010 Schedule of Regulatory Fees (continued)

FY 2010 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤25,000	$675	$550	$500	$575	$650	$825
25,001–75,000	1,350	1,075	750	875	1,325	1,450
75,001–150,000	2,025	1,350	1,000	1,450	1,825	2,725
150,001–500,000	3,050	2,300	1,500	1,725	2,800	3,550
500,001–1,200,000	4,400	3,500	2,500	2,875	4,450	5,225
1,200,001–3,000,000	6,750	5,400	3,750	4,600	7,250	8,350
>3,000,000	8,100	6,475	4,750	5,750	9,250	10,850

FY 2010 Schedule of Regulatory Fees

International Bearer Circuits—Submarine Cable

Submarine cable systems (capacity as of December 31, 2009)	Fee amount	Address
<2.5 Gbps	$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
2.5 Gbps or greater, but less than 5 Gbps	29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
5 Gbps or greater, but less than 10 Gbps	58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
10 Gbps or greater, but less than 20 Gbps	116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000

Submarine cable systems (capacity as of December 31, 2009)	Fee amount	Address
20 Gbps or greater	233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000

APPENDIX D

Sources of Payment Unit Estimates for FY 2010

In order to calculate individual service fees for FY 2010, we adjusted FY 2009 payment units for each service to more accurately reflect expected FY 2010 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2010 estimates with actual FY 2009 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2010 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2010 payment units are based on FY 2009 actual payment units, it does not necessarily mean that our FY 2010 projection is exactly the same number as FY 2009. We have either rounded the FY 2010 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 09 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 09 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units.
Broadcast Auxiliaries	Based on actual FY 2009 payment units.
BRS (formerly MDS/MMDS) LMDS	Based on WTB reports and actual FY 2009 payment units. Based on WTB reports and actual FY 2009 payment units.
Cable Television Relay Service ("CARS") Stations.	Based on data from Media Bureau's COALS database and actual FY 2009 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2009 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2009, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2010 FCC Form 499–A worksheets in April, 2010.
Earth Stations	Based on International Bureau ("IB") licensing data and actual FY 2009 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2009 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

APPENDIX E

Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in

[1] 47 CFR 73.150 and 73.152.

[2] *See* Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

APPENDIX F

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[1] the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in its *Notice of Proposed Rulemaking.* Written public comments were sought on the FY 2010 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.[2]

I. Need for, and Objectives of, the Notice

2. This rulemaking proceeding was initiated for the Commission to amend its Schedule of Regulatory Fees in the amount of $335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. No parties have raised issues in response to the IRFA.

III. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

5. Small Businesses. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[7]

6. Small Organizations. Nationwide, as of 2002, there are approximately 1.6 million small organizations.[8] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9]

7. Small Governmental Jurisdictions. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[12] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[13] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[14] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. Incumbent Local Exchange Carriers ("ILECs"). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[15] According to Commission data,[16] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[17] According to Commission data,[18] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

11. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] According to Commission data,[20] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of

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[3] 47 CFR 73.313.

[1] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] 5 U.S.C. 604.

[3] 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] 15 U.S.C. 632.

[7] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (accessed Jan. 2009).

[8] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[9] 5 U.S.C. 601(4).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[12] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] 15 U.S. C. 632.

[14] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) ("Small Business Act"); 5 U.S.C. 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[15] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[16] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5–5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

[17] 13 CFR 121.201, NAICS code 517110.

[18] "Trends in Telephone Service" at Table 5.3.

[19] 13 CFR 121.201, NAICS code 517310.

[20] "Trends in Telephone Service" at Table 5.3.

local resellers are small entities that may be affected by our action.

12. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[21] According to Commission data,[22] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. Payphone Service Providers ("PSPs"). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[23] According to Commission data,[24] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. Interexchange Carriers ("IXCs"). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[25] According to Commission data,[26] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

15. Operator Service Providers ("OSPs"). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[27] According to Commission data,[28] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[29] According to Commission data,[30] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

17. 800 and 800-Like Service Subscribers.[31] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[32] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[33] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

18. Satellite Telecommunications and All Other Telecommunications. These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[34] The second has a size standard of $25 million or less in annual receipts.[35] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[36]

19. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[37] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[38] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[39] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."[40] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[41] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[42] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[43] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless

[21] 13 CFR 121.201, NAICS code 517310.

[22] "Trends in Telephone Service" at Table 5.3.

[23] 3 CFR 121.201, NAICS code 517110.

[24] "Trends in Telephone Service" at Table 5.3.

[25] 13 CFR 121.201, NAICS code 517110.

[26] "Trends in Telephone Service" at Table 5.3.

[27] 13 CFR 121.201, NAICS code 517110.

[28] "Trends in Telephone Service" at Table 5.3.

[29] 13 CFR 121.201, NAICS code 517310.

[30] "Trends in Telephone Service" at Table 5.3.

[31] We include all toll-free number subscribers in this category.

[32] 13 CFR 121.201, NAICS code 517310.

[33] "Trends in Telephone Service" at Tables 18.4, 18.5, 18.6, and 18.7.

[34] 13 CFR 121.201, NAICS code 517410.

[35] 13 CFR 121.201, NAICS code 517919.

[36] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[37] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[38] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[39] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[40] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[41] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[42] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[43] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

Telecommunications."[44] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[45] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[46] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[47] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[48] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[49] Thus, we estimate that the majority of wireless firms are small.

22. Auctions. Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. Common Carrier Paging. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[50] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[51] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[52] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[53] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[54] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[55] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[56] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[57] Thus, we estimate that the majority of wireless firms are small.

24. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[58] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[59] The SBA has approved this definition.[60] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[61] Fifty-seven companies claiming small business status won 440 licenses.[62] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[63] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[64]

25. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging and messaging" services.[65] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[66] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

26. 2.3 GHz Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[67] The SBA has approved these definitions.[68] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

27. 1670–1675 MHz Services. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

28. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted,

[44] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[45] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[46] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[47] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[48] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[49] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[50] 13 CFR 121.201, NAICS code 517212.

[51] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[52] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[53] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[54] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[55] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[56] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[57] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[58] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[59] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[60] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[61] *See* "*929 and 931 MHz Paging Auction Closes,*" Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[62] *See id.*

[63] *See* "*Lower and Upper Paging Band Auction Closes,*" Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[64] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[65] "Trends in Telephone Service" at Table 5.3.

[66] "Trends in Telephone Service" at Table 5.3.

[67] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[68] *See Alvarez Letter 1998.*

the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[69] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[70] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[71] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[72] We have estimated that 222 of these are small under the SBA small business size standard.

29. Broadband Personal Communications Service. The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[73] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[74] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[75] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[76] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[77]

30. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[78] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[79] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[80] Of the 14 winning bidders, six were designated entities.[81] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[82]

31. Advanced Wireless Services. In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"), designated as Auction 66.[83] The Commission defined "small business" as an entity with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years.[84] A small business received a 15 percent discount on its winning bid.[85] A "very small business" is defined as an entity with attributed average annual gross revenues that did not exceed $15 million for the preceding three years.[86] A very small business received a 25 percent discount on its winning bid.[87] In Auction 66, thirty-one winning bidders identified themselves as very small businesses and won 142 licenses.[88] Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.[89] In 2008, the Commission conducted an auction of AWS–1 licenses, designated as Auction 78, which offered 35 licenses for which there were no winning bids in Auction 66.[90] Four winning bidders that identified themselves as very small businesses won 17 AWS–1 licenses.[91] Three of the winning bidders that identified themselves as a small business won five AWS–1 licenses.

32. Narrowband Personal Communications Services. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[92] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[93] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[94] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[95] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[96] The SBA has approved these small business size standards.[97] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[98] Three of these claimed status as a small or very small entity and won 311 licenses.

33. 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[99] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[100] A "very small business" is defined as an entity that, together with its affiliates and controlling

[69] 13 CFR 121.201, NAICS code 517210.

[70] *Id.*

[71] "Trends in Telephone Service" at Table 5.3.

[72] "Trends in Telephone Service" at Table 5.3.

[73] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) ("*PCS Report and Order*"); *see also* 47 CFR 24.720(b).

[74] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[75] *See Alvarez Letter 1998.*

[76] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[77] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[78] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 2339 (2001).

[79] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *Public Notice,* 20 FCC Rcd 3703 (2005).

[80] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *Public Notice,* 22 FCC Rcd 9247 (2007).

[81] *Id.*

[82] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled For August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *Public Notice,* 23 FCC Rcd 7496 (2008) ("AWS–1 and Broadband PCS Procedures Public Notice").

[83] *See* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice,* 21 FCC Rcd 4562 (2006) ("*Auction 66 Procedures Public Notice*");

[84] 47 CFR 27.1102(a)(1).

[85] *See* 47 CFR 1.2110(f)(2).

[86] 47 CFR 27.1102(a)(2)

[87] *See* 47 CFR 1.2110(f)(2).

[88] *See* Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice,* 21 FCC Rcd 10,521 (2006) ("*Auction 66 Closing Public Notice*")

[89] *See id.*

[90] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[91] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *Public Notice,* 23 FCC Rcd 12749–65 (2008).

[92] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[93] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (released Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *Public Notice,* PNWL 94–27 (released Nov. 9, 1994).

[94] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) ("*Narrowband PCS Second Report and Order*").

[95] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[96] *Id.*

[97] *See Alvarez Letter 1998.*

[98] *See* "Narrowband PCS Auction Closes," *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[99] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52–59 Report and Order*").

[100] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

principals, has average gross revenues that are not more than $15 million for the preceding three years.[101] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[102] The SBA approved these small size standards.[103] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[104] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[105] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[106] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

34. In 2007, the Commission adopted the *700 MHz Second Report and Order.*[107] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, there were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses.[108] There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[109] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[110]

35. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[111] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[112] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[113] SBA approval of these definitions is not required.[114] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[115] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of eight 700 MHz Guard Band licenses commenced and closed in 2001. Of the three winning bidders, one was a small business that won two of the eight licenses.[116]

36. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years.[117] The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years.[118] The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Service.[119] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[120] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[121]

37. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[122] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[123] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic

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[101] *See id.*

[102] *See id,* 17 FCC Rcd at 1088, para. 173.

[103] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

[104] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[105] *See* "Lower 700 MHz Band Auction Closes," *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[106] *See id.*

[107] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) ("*700 MHz Second Report and Order*"), 22 FCC Rcd 15289 (2007).

[108] *See* Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice,* 23 FCC Rcd 4572 (2008).

[109] *Id.* 23 FCC Rcd at 4572–73.

[110] *Id.*

[111] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746–764 MHz Band Second Report and Order*").

[112] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[113] *See id.*

[114] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[115] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 18026 (2000).

[116] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[117] 47 CFR 90.814(b)(1).

[118] 47 CFR 90.814(b)(1).

[119] *See Alvarez Letter 1999.*

[120] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,'" *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[121] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[122] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *Public Notice,* 15 FCC Rcd 17162 (2000).

[123] *See,* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *Public Notice,* 16 FCC Rcd 1736 (2000).

licenses in the 800 MHz SMR band claimed status as small business.

38. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.[124] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

39. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[125] This category provides that a small business is a wireless company employing no more than 1,500 persons.[126] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

40. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[127] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[128] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[129] The SBA has approved these small size standards.[130] A small business is eligible for a 25 percent discount on its winning bid. A very small business is eligible for a 35 percent discount on its winning bid. The first auction of Phase II licenses was conducted in 1998.[131] In the first auction, 908 licenses were offered in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[132] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[133] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[134] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.[135] Auction 72 offered 94 Phase II 220 MHz Service licenses.[136] In this auction, five winning bidders won a total of 76 licenses.[137] Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified itself as a small business won 5 of the 76 licenses won.

41. Cellular Radiotelephone Service. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[138] Bidding credits for designated entities were not available in Auction 77.[139] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[140]

42. Private Land Mobile Radio ("PLMR"). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[141] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[142]

43. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

44. Fixed Microwave Services. Fixed microwave services include common carrier,[143] private operational-fixed,[144] and broadcast auxiliary radio services.[145] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the

[124] *See generally* 13 CFR 121.201, NAICS code 517210.

[125] *Id.*

[126] *Id.*

[127] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[128] *Id.* at 11068, para. 291.

[129] *Id.*

[130] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

[131] *See generally* "220 MHz Service Auction Closes," *Public Notice,* 14 FCC Rcd 605 (1998).

[132] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *Public Notice,* 14 FCC Rcd 1085 (1999).

[133] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *Public Notice,* 14 FCC Rcd 11218 (1999).

[134] *See* "Multi-Radio Service Auction Closes," *Public Notice,* 17 FCC Rcd 1446 (2002).

[135] *See* "Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[136] *Id.*

[137] *See* "Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *Public Notice,* 22 FCC Rcd 11573 (2007).

[138] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *Public Notice,* 23 FCC Rcd 6670 (2008).

[139] *Id.* at 6685.

[140] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *Public Notice,* 23 FCC Rcd 9501 (2008).

[141] *See* 13 CFR 121.201, NAICS code 517210.

[142] *See generally* 13 CFR 121.201.

[143] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[144] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[145] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[146] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[147] An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[148] The SBA has approved these small business size standards.[149] The auction of the 2,173, 39 GHz licenses was conducted in 2000. The 18 bidders who claimed small business status won 849 licenses.

46. Local Multipoint Distribution Service. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[150] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[151] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[152] The SBA has approved these small business size standards in the context of LMDS auctions.[153] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses that won 119 licenses.

47. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[154] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[155] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[156] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[157] The SBA has approved of these definitions.[158]

48. Location and Monitoring Service ("LMS"). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[159] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[160] These definitions have been approved by the SBA.[161] An auction for LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

49. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[162] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[163] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[164] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

50. Air-Ground Radiotelephone Service.[165] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[166] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[167] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[168] These definitions were approved by the SBA.[169] In 2006, the

[146] 13 CFR 121.201, NAICS code 517210.

[147] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[148] *Id.*

[149] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[150] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) ("*LMDS Second Report and Order*").

[151] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[152] *See id.*

[153] *See Alvarez to Phythyon Letter 1998.*

[154] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" Public Notice, 9 FCC Rcd 6227 (1994).

[155] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[156] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[157] *Id.*

[158] *See Alvarez to Phythyon Letter 1998.*

[159] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para 20 (1998) ("*Automatic Vehicle Monitoring Systems Second Report and Order*"); *see also* 47 CFR 90.1103.

[160] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[161] *See Alvarez Letter 1998.*

[162] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[163] BETRS is defined in 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[164] 13 CFR 121.201, NAICS code 517210.

[165] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[166] 13 CFR 121.201, NAICS codes 517210.

[167] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[168] *Id.*

[169] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

51. Aviation and Marine Radio Services. There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[170] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[171] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[172] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[173] Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61.[174] Winning bidders could claim status as a small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[175] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

52. Offshore Radiotelephone Service. This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[176] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[177] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[178]

53. Multiple Address Systems ("MAS"). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[179] A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[180] The SBA has approved these definitions.[181] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.[182] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

54. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[183] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

55. 1.4 GHz Band Licensees. The Commission conducted an auction of 64 1.4 GHz band licenses[184] in 2007.[185] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[186] Neither of the two winning bidders sought designated entity status.[187]

56. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[188] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[189] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

57. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding

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[170] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[171] 13 CFR 121.201, NAICS code 517210.

[172] A licensee may have a license in more than one category.

[173] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[174] *See* "*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*" Public Notice, 19 FCC Rcd 9518 (WTB 2004); "*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*" Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[175] 47 CFR 80.1252.

[176] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[177] 13 CFR 121.201, NAICS code 517210.

[178] *Id.*

[179] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[180] *Id.*

[181] *See Alvarez Letter 1999.*

[182] *See* "*Multiple Address Systems Spectrum Auction Closes,*" Public Notice, 16 FCC Rcd 21011 (2001).

[183] *See* 13 CFR 121.201, NAICS code 517210.

[184] *See* "*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*" Public Notice, 21 FCC Rcd 12393 (WTB 2006).

[185] *See* "*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*" Public Notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[186] *Auction No. 69 Closing PN,* Attachment C.

[187] *See Auction No. 69 Closing PN.*

[188] 13 CFR 121.201, NAICS code 517210.

[189] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

$15 million.[190] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[191] The SBA has approved these definitions.[192] In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

58. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[193] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[194] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[195] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[196] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[197] Auction 86 concluded with the sale of 61 licenses.[198] Of the ten winning bidders, three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses.

59. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[199] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[200] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[201] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[202] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[203] Thus, the majority of these firms can be considered small.

60. Television Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[204] The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts.[205] The Commission has estimated the number of licensed commercial television stations to be 1,395.[206] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[207] We therefore estimate that the majority of commercial television broadcasters are small entities.

61. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[208] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

62. In addition, the Commission has estimated the number of licensed

[190] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 CFR 101.538(a)(2).

[191] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[192] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[193] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) ("*MDS Auction R&O*").

[194] 47 CFR 21.961(b)(1).

[195] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[196] *Id.* at 8296.

[197] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice,* 24 FCC Rcd 8277 (2009).

[198] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice,* 24 FCC Rcd 13572 (2009).

[199] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[200] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[201] 13 CFR 121.201, NAICS code 517110.

[202] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[203] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[204] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[205] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[206] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[207] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[208] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 21.103(a)(1).

noncommercial educational (NCE) television stations to be 390.[209] These stations are non-profit, and therefore considered to be small entities.[210]

63. In addition, there are also 2,386 low power television stations (LPTV).[211] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

64. Radio Broadcasting. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[212] The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts.[213] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

65. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[214] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[215] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

66. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[216]

67. The Commission estimates that there are approximately 5,618 FM translators and boosters.[217] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[218]

68. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[219] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[220] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[221] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[222] Thus, the majority of these firms can be considered small.

69. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[223] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[224] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[225] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[226] Thus, under this second size standard, most cable systems are small.

70. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[227] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[228] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[229] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[230] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

71. Open Video Systems. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange

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[209] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[210] *See generally* 5 U.S.C. 601(4), (6).

[211] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[212] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[213] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[214] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[215] 13 CFR 121.102(b) (an SBA regulation).

[216] 13 CFR 121.201, NAICS codes 515112 and 515120.

[217] *See supra* note 242.

[218] *See* 15 U.S.C. 632.

[219] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[220] 13 CFR 121.201, NAICS code 517110.

[221] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[222] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[223] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[224] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[225] 47 CFR 76.901(c).

[226] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[227] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[228] 47 CFR 76.901(f); *see* Public Notice *, FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[229] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[230] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

carriers.[231] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[232] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[233] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[234] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[235] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[236] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[237] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[238] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

72. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[239] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[240] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[241] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[242] Thus, the majority of these firms can be considered small.

73. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[243] These definitions were approved by the SBA.[244] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[245] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[246]

74. Amateur Radio Service. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

75. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[247] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[248] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

76. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[249] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"),

[231] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[232] *See* 47 U.S.C. 573.

[233] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[234] 13 CFR 121.201, NAICS code 517110.

[235] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[236] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[237] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[238] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[239] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[240] 13 CFR 121.201, NAICS code 517110.

[241] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[242] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[243] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[244] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

[245] *See* "*Multichannel Video Distribution and Data Service Auction Closes,*" Public Notice, 19 FCC Rcd 1834 (2004).

[246] *See* "*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,*" Public Notice, 20 FCC Rcd 19807 (2005).

[247] 13 CFR 121.201, NAICS code 517210.

[248] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[249] 47 CFR Part 90.

Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[250] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[251] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

77. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[252] There are a total of approximately 127,540 licensees in these services. Governmental entities[253] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[254]

78. Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (e.g. dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[255] which has an SBA small business size standard of 1,500 or fewer employees.[256] The latter are within the category of All Other Telecommunications,[257] which has a size standard of annual receipts of $25 million or less.[258] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[259] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[260] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[261] Consequently, we estimate that the majority of ISP firms are small entities.

79. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

80. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

81. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit electronically an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[262] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit electronically the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service when they complete electronically and submit the FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the electronic FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

82. As discussed previously in this *Order,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and we will create an electronic record of licensee payment attributes that are more easily traced than

[250] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[251] 13 CFR 121.201, NAICS Code 517210.

[252] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[253] 47 CFR 1.1162.

[254] 5 U.S.C. 601(5).

[255] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[256] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[257] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[258] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[259] U.S. Census Bureau, "2002 NAICS Definitions, "518111 Internet Service Providers"; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[260] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[261] An additional 45 firms had receipts of $25 million or more.

[262] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

those payments that are simply mailed in with a hardcopy Form 159.

83. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[263] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[264] Further, in accordance with the DCIA, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[265] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[266]

84. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[267] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

85. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[268] In our *NPRM,* we sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding. We received no comments specifically in response to the IRFA.

86. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

VI. Report to Congress

87. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[269] In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[270]

APPENDIX G

FY 2009 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40.
Microwave (per license) (47 CFR part 101)	30.
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	65.
Marine (Ship) (per station) (47 CFR part 80)	10.
Marine (Coast) (per license) (47 CFR part 80)	45.
General Mobile Radio Service (per license) (47 CFR part 95)	5.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	20.
PLMRS (Shared Use) (per license) (47 CFR part 90)	20.
Aviation (Aircraft) (per station) (47 CFR part 87)	5.
Aviation (Ground) (per license) (47 CFR part 87)	10.
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.34.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 21)	320.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	320.
AM Radio Construction Permits	400.
FM Radio Construction Permits	650.
TV (47 CFR part 73) VHF Commercial	
Markets 1–10	77,575.
Markets 11–25	60,550.
Markets 26–50	37,575.
Markets 51–100	22,950.
Remaining Markets	5,950.
Construction Permits	5,950.
TV (47 CFR part 73) UHF Commercial	
Markets 1–10	24,250.
Markets 11–25	21,525.
Markets 26–50	13,350.
Markets 51–100	7,600.
Remaining Markets	1,950.
Construction Permits	1,950.
Satellite Television Stations (All Markets)	1,275.

[263] 47 CFR 1.1164.

[264] 47 CFR 1.1164(c).

[265] Public Law 104–134, 110 Stat. 1321 (1996).

[266] 31 U.S.C. 7701(c)(2)(B).

[267] 47 CFR 1.1166.

[268] 5 U.S.C. 603.

[269] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[270] *See* 5 U.S.C. 604(b).

Fee category	Annual regulatory fee (U.S. $'s)
Construction Permits—Satellite Television Stations	650.
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	400.
Broadcast Auxiliaries (47 CFR part 74)	10.
CARS (47 CFR part 78)	260.
Cable Television Systems (per subscriber) (47 CFR part 76)	.88.
Interstate Telecommunication Service Providers (per revenue dollar)	.00342.
Earth Stations (47 CFR part 25)	210.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	127,175.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	137,225.
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.75.
International Bearer Circuits—Submarine Cable	See Table Below.

FY 2009 Schedule of Regulatory Fees (continued)

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
< = 25,000	$675	$550	$500	$575	$650	$825
25,001–75,000	1,350	1,075	750	875	1,325	1,450
75,001–150,000	2,025	1,350	1,000	1,450	1,825	2,725
150,001–500,000	3,050	2,300	1,500	1,725	2,800	3,550
500,001–1,200,000	4,400	3,500	2,500	2,875	4,450	5,225
1,200,001–3,000,00	6,750	5,400	3,750	4,600	7,250	8,350
>3,000,000	8,100	6,475	4,750	5,750	9,250	10,850

FY 2009 Schedule of Regulatory Fees
International Bearer Circuits—Submarine Cable

Submarine cable systems (capacity as of December 31, 2008)	Fee amount	Address
< 2.5 Gbps	$15,075	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	30,125	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	60,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	120,525	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	241,025	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

APPENDIX H

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309.

■ 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90)		
(a) New, Renew/Mod (FCC 601 & 159)	$40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00	FCC; P.O. Box 979097, St. Louis, MO 63197–9000.
220 MHz Nationwide		
(a) New, Renew/Mod (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
2. Microwave (47 CFR Pt. 101) (Private)		
(a) New, Renew/Mod (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.

Exclusive use services (per license)	Fee amount [1]	Address
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
3. 218–219 MHz Service		
(a) New, Renew/Mod (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	65.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
4. Shared Use Services		
Land Mobile (Frequencies Below 470 MHz—except 220 MHz)		
(a) New, Renew/Mod (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
General Mobile Radio Service		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Rural Radio (Part 22)		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	20.00	FCC, P.O. Box 979097, St. Louis, MO, 63197–9000.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	20.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Coast		
(a) New Renewal/Mod (FCC 601 & 159)	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	45.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Ground		
(a) New, Renewal/Mod (FCC 601 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Marine Ship		
(a) New, Renewal/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
Aviation Aircraft		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159)	1.33	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.33	FCC, P.O. Box 979097, St. Louis, MO 63197–9000.
6. CMRS Cellular/Mobile Services (per unit)		
(FCC 159)	.18 [2]	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
7. CMRS Messaging Services (per unit)		
(FCC 159)	.08 [3]	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
8. Broadband Radio Service (formerly MMDS and MDS)	310	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.
9. Local Multipoint Distribution Service	310	FCC, P.O. Box 979084, St. Louis, MO 63197–9000.

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in 1.1102.

[2] These are standard fees that are to be paid in accordance with 1.1157(b).

[3] These are standard fees that are to be paid in accordance with 1.1157(b).

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
1. *AM Class A:*		
<=25,000 population	$675	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,350	
75,001–150,000 population	2,025	
150,001–500,000 population	3,050	
500,001–1,200,000 population	4,400	
1,200,001–3,000,000 population	6,750	
>3,000,000 population	8,100	
2. *AM Class B:*		

Radio [AM and FM] (47 CFR, Part 73)	Fee amount	Address
<=25,000 population	550	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,075	
75,001–150,000 population	1,350	
150,001–500,000 population	2,300	
500,001–1,200,000 population	3,500	
1,200,001–3,000,000 population	5,400	
>3,000,000 population	6,475	
3. *AM Class C:*		
<=25,000 population	500	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	750	
75,001–150,000 population	1,000	
150,001–500,000 population	1,500	
500,001–1,200,000 population	2,500	
1,200,001–3,000,000 population	3,750	
>3,000,000 population	4,750	
4. *AM Class D:*		
<=25,000 population	575	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	875	
75,001–150,000 population	1,450	
150,001–500,000 population	1,725	
500,001–1,200,000 population	2,875	
1,200,001–3,000,000 population	4,600	
>3,000,000 population	5,750	
5. AM Construction Permit	390	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
6. *FM Classes A, B1 and C3:*		
<=25,000 population	650	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,325	
75,001–150,000 population	1,825	
150,001–500,000 population	2,800	
500,001–1,200,000 population	4,450	
1,200,001–3,000,000 population	7,250	
>3,000,000 population	9,250	
7. *FM Classes B, C, C0, C1 and C2:*		
<=25,000 population	825	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
25,001–75,000 population	1,450	
75,001–150,000 population	2,725	
150,001–500,000 population	3,550	
500,001–1,200,000 population	5,225	
1,200,001–3,000,000 population	8,350	
>3,000,000 population	10,850	
8. FM Construction Permits	675	FCC, Radio, P.O. Box 979084, St. Louis, MO 63197–9000.
TV (47 CFR, Part 73)		
VHF Commercial:		
1. Markets 1 thru 10	81,550	FCC, TV Branch, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	63,275	
3. Markets 26 thru 50	42,550	
4. Markets 51 thru 100	23,750	
5. Remaining Markets	6,125	
6. Construction Permits	6,125	
UHF Commercial:		
1. Markets 1 thru 10	32,275	FCC, UHF Commercial, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Markets 11 thru 25	30,075	
3. Markets 26 thru 50	18,900	
4. Markets 51 thru 100	11,550	
5. Remaining Markets	3,050	
6. Construction Permits	3,050	
Satellite UHF/VHF Commercial:		
1. All Markets	1,300	FCC Satellite TV, P.O. Box 979084, St. Louis, MO 63197–9000.
2. Construction Permits	675	
Low Power TV, Class A TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74).	415	FCC, Low Power, P.O. Box 979084, St. Louis, MO 63197–9000.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 979084, St. Louis, MO 63197–9000.

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio facilities	Fee amount	Address
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$25.00	FCC, P.O. Box 979097, St. Louis, MO 63197–9000
Carriers		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00349	FCC, Carriers, P.O. Box 979084, St. Louis, MO 63197–9000

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$315	FCC, Cable, P.O. Box 979084, St. Louis, MO 63197–9000
2. Cable TV System (per subscriber)	.89	

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

(a) The following schedule applies for the listed services:

Fee category	Fee amount	Address
Space Stations (Geostationary Orbit)	$127,925	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
Space Stations (Non-Geostationary Orbit)	138,050	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).	240	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000

(b)(1) *International Terrestrial and Satellite.* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active 64 KB circuit or equivalent will be determined for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

International terrestrial and satellite (capacity as of December 31, 2009)	Fee amount	Address
Terrestrial Common Carrier Satellite Common Carrier Satellite Non-Common Carrier	$0.39 per 64 KB Circuit	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

(c) *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year. Payment, if mailed, shall be sent to: FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Submarine cable systems (capacity as of Dec. 31, 2009)	Fee amount	Address
<2.5 Gbps	$14,625	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	$29,250	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	$58,500	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

Submarine cable systems (capacity as of Dec. 31, 2009)	Fee amount	Address
10 Gbps or greater, but less than 20 Gbps	$116,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	$233,950	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

[FR Doc. 2010–17331 Filed 7–16–10; 8:45 am]

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